

PETROLEUM ASSOCIATION OF WYOMING

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October 1, 2001

Mr. James L. Connaughton
Chairman
Council on Environmental Quality
Executive Office of the President
17th and G Streets, N.W.
Washington, D.C. 20503

Attn: Task Force

Dear Mr. Chairman:

The Petroleum Association of Wyoming (PAW) would like to thank the Council on Environmental Quality (CEQ) for the opportunity to comment on issues affecting mineral access to federal lands. PAW is Wyoming's largest and oldest oil and gas organization, the members of which account for over ninety percent of the natural gas and over seventy percent of the crude oil produced in the State. This CEQ Task Force will focus on issues that directly affect members of PAW.

You undoubtedly have been hearing the message that two acts of Congress, the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), have been the source of much of industries problems with gaining reasonable access to public lands. As Wyoming's Governor Jim Geringer is fond of stating, "It's not the act, it's the actors that are the problem". It seems as though the previous Administration has tailored the thinking of the Bureau of Land Management (BLM) and the Forest Service (FS) to delay resource development any place it can be restricted.

As a member of Public Lands Advocacy (PLA), a Denver, Colorado based organization, PAW supports and incorporates by reference PLA's comments in their entirety emphasizing the problem with permitting delays in the BLM offices due to lack of manpower and the need to streamline the NEPA process. However, in this comment letter PAW would like to focus on specific issues affecting the oil and gas industry and our ability to access public lands. PAW will attempt to identify for you some of the "tools" the agencies are using to delay resource development, provide you with real examples of these delays, and provide suggestions on how best to correct the problem.

In your request for information, you identified four categories and we are unsure which category to place our issues. It is recommended that another category be created



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1. **Instructional Documents:** There was an abundance of instructional memoranda, information bulletins, solicitor opinions, and policy documents issued by the Clinton Administration. It is the opinion of PAW that many of these existing documents are deliberately interpreted and implemented by the federal agencies in a manner that is contrary to the Bush Administration's National Energy Policy and Executive Orders 13211 and 13212; thereby, impeding resource development and creating confusion and inconsistency among state and field offices throughout Wyoming. A few of these examples are discussed in detail throughout this letter and the official documents that are referred to are provided in the Appendix section.

The highest priority and most effective action that the current Administration can take is to immediately develop clear and consistent written instructions to the federal agencies emphasizing, through mandate, the management of public lands to promote multiple use (particularly energy development) and sustained yield. Once new or clarifying instructions are issued, careful oversight must be provided by this Administration to ensure that such instructions are interpreted and implemented on the ground as they were intended.

2. **Resource Management Plan Revisions:** The BLM is currently undertaking wide spread Resource Management Plan (RMP) revisions throughout the west. The existing RMP's identify millions of acres of land as available for lease, but the agencies have refused to lease some of the acreage citing insufficient NEPA documentation as the reason. PAW believes that one of the results of the new RMP revisions will be the permanent removal of a sizeable portion of these lands from lease availability or the inclusion of such restrictive lease stipulations that lease development is rendered uneconomic or impractical, which will be contrary to the National Energy Policy. Clear and concise written instructions should be issued to BLM state and field offices immediately to guide the amendment process. Once instructions are issued, careful oversight must be provided by the Administration to ensure that such instructions are interpreted and implemented as they were intended.
3. **De Facto Wilderness:** FLPMA Section 603 clearly identifies October 1991 as the deadline for BLM to inventory their lands for wilderness values and make their recommendations for wilderness designation. BLM has, to date, successfully circumvented the Section 603 sunset clause and continues to manage large blocks of land as "de facto wilderness" by acquiescing to citizen wilderness proposals and abusing Section 201 and 202 of FLPMA in defiance of



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the intent of Congress. The lands being classified as having wilderness values under Section's 201 and 202 of FLPMA often have substantial man-made improvements on them. However, once BLM begins managing the lands in the "hands-off" manner of a Wilderness Study Area (WSA) they eventually lose their evidence of man and become wilderness. While Congress intended that they, alone, have the authority to designate wilderness, the "Wilderness Inventory and Study Procedures Handbook" issued January 10, 2001 states on page 26 that "there is no requirement to send wilderness designation recommendations forward to the Congress for WSAs established under the provisions of the Handbook". (Appendix E) This direction establishes the management of "de facto wilderness" designations indefinitely. This Administration must issue clear and concise written instructions to their agencies regarding wilderness, wilderness inventories and management for wilderness values to avoid the perpetuation of "de facto wilderness".

4. **Jack Morrow Hills:** The Jack Morrow Hills Coordinated Activity Plan is an example of how highly prospective and productive lands are being removed from development opportunities by abuses enumerated above in items one through three. Please review the petition that was submitted on May 25, 2001 by PAW, et al. (Appendix A). PAW applauds the Administration's recent decision to overturn former Secretary Bruce Babbitt's directive, which mandated that a new supplemental environmental impact statement be issued, wherein the "conservation alternative" will be the "preferred alternative". However, there are several precedent setting policy documents that were written or revised to support Secretary Babbitt's directive and they should be rescinded or revised. The referenced documents include, but are not limited to, the following: 1) Solicitor Opinion and cover letter dated December 22, 2000 (Appendix B); 2) Information Bulletin #2001-042 dated January 12, 2001 (Appendix C); 3) Instruction Memorandum #2001-075 dated January 19, 2001 (Appendix D); and 4) Wilderness Inventory and Study Procedures Handbook dated January 10, 2001. (Appendix E)
5. **National Historic Trails:** The Wyoming State BLM Office is currently developing guidelines to protect viewsheds associated with congressionally designated trails and provide management recommendations and prescriptions for specific trail segments and sites that are eligible for listing on the National Register of Historic Places. This new directive is the result of former President Clinton's Executive Order 13195, "Trails for America in the 21st Century", which was signed on January 18, 2001. The Executive Order outlines the directive to protect "(b) ...the trail corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails to the degrees necessary to ensure that the values for which each trail was established remain intact...(c) Coordinating maps and data for the components of the national trails system and Millennium Trails network to ensure that these trails are connected



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Since the implementation of this Executive Order, Wyoming BLM has been charged with developing a program to accomplish the following: 1) Conduct a viewshed analysis five (5) miles from the centerline on each side of the trail; 2) construct a predictive modeling process for trails; 3) prepare a statewide context study to determine whether new trail segments should be registered as historic; 4) determine cultural and historical significance of trail segments; and 5) prepare a Trails Management Plan to be used in amending the RMP's. (Appendix I)

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At this time, BLM assures PAW that the above process will only apply to **congressionally** designated historic trails and the Trails Management Plan will be subject to public review before implementation. However, PAW has submitted examples of BLM field offices which are either delaying approval or far exceeding the existing restrictions that industry is bound by in the current RMP's, which is "1/4 mile each side of the trail or visual horizon, whichever is less". (Appendix J) PAW does not oppose BLM's desire and need to gather information regarding historical resources and industry currently seeks to avoid direct impacts to trails and minimizes indirect impacts to trails; however, PAW opposes additional mitigation outside of the ¼ mile restriction to protect visual resources.

Please refer to the "BLM Concept Paper for National Historic Trails". (Appendix K) BLM is indicating that if the operator and BLM specialist cannot agree on mitigation within this protective corridor and the application is past sixty (60) days from the date of submittal, then the operator has the option of suspending the lease until an agreement can be reached. BLM also intends to attach a lease notice to **all** lease parcels beginning with the December 2001 lease sale even



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though the lease notice will only apply to parcels within the congressionally designated historic trails ten (10) mile corridor. (Appendix L) PAW believes that this is another example of a management prescription that is being implemented contrary to the National Energy Policy.

Due to the concern over the potential loss of access and adoption of more stringent mitigation measures that would apply to millions of acres in Wyoming alone, PAW opposes additional onerous restrictions that may be implemented throughout the remainder of this ten (10) mile corridor. PAW supports the current mitigation in the RMP's and requests that the Administration review, clarify, and provide guidance as to the interpretation and implementation of Executive Order 13195.

6. **Federal Actions on Non-Federal Lands as they pertain to cultural resources:** When developing Environmental Assessments and Environmental Impact Statements for BLM related projects, BLM is requesting that the applicant commit to additional, voluntary mitigation measures **regardless of landownership** and once the applicant agrees to the committed measures, they then become conditions of approval. (Appendix M) This procedure creates two troubling situations: 1) Should the applicant oppose the additional voluntary mitigation measures on private land, BLM denies the project; or 2) If the project is approved and the applicant accepts the mitigation measures regardless of landownership, the landowners may deny access for the action. Many times BLM is requesting these measures before first consulting with the landowner. Should the landowner deny access to the operator to conduct the survey or the required conditions of approval, BLM denies the action. This concept of a "connected action" between public land and private or state land is being vigorously applied by several agencies and is in need of review and guidance by this Administration.
7. **Federal Actions on Non-Federal Lands as they pertain to the Endangered Species Act:** At this time, PAW is working with BLM, Fish & Wildlife Service (FWS), and landowners regarding BLM Instructional Memorandum WY-2000-44. (Appendix N) This memorandum was issued by the Wyoming State BLM Office to help determine the proper course of action under the Endangered Species Act for federal actions affecting private property. This guidance addresses the "interrelated/interdependent" federal actions in the Continental Divide / Wamsutter II Natural Gas Project Area of which the Record of Decision was effective May 2000; however, we are concerned that the agreement reached among these parties will establish a precedent throughout the entire State of Wyoming.

In the Biological Opinion issued by the FWS and incorporated into the Record of Decision for this project, it is mandated to BLM and the operator that both broad



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scale and site-specific surveys be conducted regarding proposed, threatened or endangered species identifying potential concentration areas of habitat. While the broad scale surveys have already been completed, landowners have become resistant to allowing site-specific surveys to be conducted on private property. Landowners feel that this new information could render their property useless should a protected species(s) be discovered. Without authorization from the landowner to conduct the surveys, BLM will not approve the operator's action because the lack of information will not satisfy terms and conditions required by the Biological Opinion.

PAW continues to work in good faith with BLM, FWS, and landowners to resolve this problem; however, to date we have not reached a solution. PAW would welcome any suggestions or guidance that the Administration may suggest to solve this issue and prevent inevitable litigation.

8. **Adaptive Environmental Management:** BLM often implements an oil and gas restrictive stipulation when they perceive a threat to a resource value even though they lack the science or data to support the restriction. The protection of wintering big game animals is applied from November 15 through April 30 each year. In the absence of good data, neither BLM nor the operator really knows if the closure is protecting the wintering animals or if it should be a month longer or maybe it could be a month shorter. The actual result is the "best guess" mitigation measure becomes a threshold that BLM rarely reduces but often increases. BLM should be required to monitor their mitigation measures in the field and quantify their effectiveness. Monitoring should then become the basis for adjustments to the mitigation measures. This will require additional budget appropriations for manpower to avoid unfairly placing the burden on industry.

The Record of Decision for the Pinedale Anticline Oil and Gas Exploration and Development Project was effective in July 2000 and attempted to address this issue as part of the decision document. The document outlined the planning process for Adaptive Environmental Management (AEM) and described the basic components of AEM and steps involved in its implementation. (Appendix O)

PAW is not opposed to the intent of AEM; however, should this form of local and stakeholder participation be the standard in the future, parameters must be developed to establish a more balanced and productive process. We are particularly worried about participation in the process by parties with no apparent qualifications or expertise in the areas for which they are concerned.

Correcting these problems will be an essential part of ensuring that this nation's public lands contribute to our domestic energy needs. Most of the corrections can be made with internal memoranda and instructions and should not result in negative publicity, but will greatly enhance resource development.



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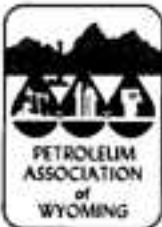
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APPENDIX A

OFFICE OF THE SECRETARY
DEPARTMENT OF THE INTERIOR

IN RE: JACK MORROW HILLS COORDINATED ACTIVITY PLAN
AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

PETITION TO SECRETARY
TO RESCIND THE JACK MORROW HILLS
DECISION OF SECRETARY BABBITT;
RECONSIDER OPINION OF THE SOLICITOR, AND
TO RESCIND BLM INSTRUCTION MEMORANDUM 2001-75

Constance E. Brooks
Michael B. Marinovich
C. E. BROOKS & ASSOCIATES, P.C.
999 18th Street, Suite 1605
Denver, CO 80202
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May 25, 2001

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May 25, 2001

Honorable Gale Norton
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Petition to Rescind Direction for the Jack Morrow Hills Coordinated
Activity Plan and Draft Environmental Impact Statement

Dear Secretary Norton,

The individuals and organizations signing this letter support the attached Petition and ask that you give it your careful and prompt attention.

The Petition requests that the Secretary of the Department of the Interior ("DOI") rescind the December 22, 2000 decision of former Interior Secretary Bruce Babbitt directing the Bureau of Land Management ("BLM") to adopt a specific "conservation alternative" for the Jack Morrow Hills Coordinated Activity Plan ("JMHCAP") and the Draft Environmental Impact Statement ("DEIS"), consistent with an opinion of the Solicitor dated the same day. The Petition also asks that the Interior Secretary (1) reconsider the Interior Solicitor's opinion of December 22, 2000; (2) rescind the BLM Information Memo 2001-142 of January 7, 2001 and the BLM Instruction Memorandum 2001-075 of January 12, 2001; and (3) rescind the recently revised BLM Wilderness Inventory Handbook dated January 12, 2001.

The direction and policies listed above represent a last-minute effort by the former administration to close tens of millions of acres of public land to multiple use, including energy development and livestock grazing. The previous administration extended the policies to all public lands, without notice or public comment and without considering the long-term impacts on the nation or the nearby communities. These policies contradict Congress' direction for multiple use and the current Administration's focus on environmentally sound use of the public lands.

Honorable Gale Norton
May 25, 2001
Page 2

Thank you for your timely consideration of the Petition. Please contact any of us for clarification or expansion.

Sincerely,

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OFFICE OF THE SECRETARY
DEPARTMENT OF THE INTERIOR

IN RE: JACK MORROW HILLS
COORDINATED ACTIVITY PLAN
AND DRAFT ENVIRONMENTAL
IMPACT STATEMENT

) No. 2001-
)
) PETITION TO RESCIND DECISION OF
) DECEMBER 22, 2000; RECONSIDER
) OPINION OF THE SOLICITOR, AND TO
) RESCIND BLM INSTRUCTION
) MEMORANDUM 2001-75
)
)

The individuals and organizations who have signed the letter accompanying this Petition (hereafter "Petitioners") request the Secretary to rescind and reconsider the December 22, 2000 decision of the Department of the Interior ("DOI") Secretary Bruce Babbitt directing the Bureau of Land Management ("BLM") to adopt a specific conservation alternative for the Jack Morrow Hills Coordinated Activity Plan ("JMH CAP") and draft environmental impact statement ("DEIS") based on an opinion of the Office of the Solicitor.¹ The Petitioners further urge the Secretary to rescind Secretary Babbitt's decision, to direct the Office of the Solicitor to reconsider an unsigned opinion entitled "Jack Morrow Hills Coordinated Activity Plan" of the same date ("JMH Op."), and to cancel BLM's Instruction Memorandum and Information Bulletin, which require all BLM officials to implement the opinion of the Solicitor for all public lands. See Information Bulletin 2001-42, Recently Issued Solicitor's Opinion Regarding Land Use Planning (Jan. 12, 2001); Instruction

¹ The Secretary has inherent authority to review decisions of agency officials. The DOI regulations also grant the Secretary explicit authority to do so. 43 C.F.R. §4.5(a)(2).

Memorandum, 2001-075, Bureauwide Implementation of Solicitor's Opinion on JMH CAP (Jan. 19, 2001), and the recently revised Wilderness Inventory Handbook ("WIH").

I. EXECUTIVE SUMMARY

Petitioners seek review of Secretary Babbitt's decision and the resulting agency direction, because the Solicitor's conclusions and the agency's implementation contradict the statutory language and legislative history of the Federal Land Policy and Management Act ("FLPMA") and the National Environmental Policy Act ("NEPA"). Implementation of the Solicitor's analysis, including Secretary Babbitt's direction to adopt a revised conservation alternative not only prejudices the issues, but fails to give appropriate weight to competing public policies, particularly energy development. If Secretary Babbitt's direction and the Instruction Memorandum are allowed to stand, BLM will close several million acres of energy potential public lands in Wyoming and in the neighboring states of Colorado and Utah to energy development.² The following summarizes the findings made by the previous Administration and the contrary authority, which supports this Petition.

1. The Solicitor concluded that the JMH CAP DEIS violated NEPA, because BLM did not consider withdrawing the entire 575,000 acres from mineral development, reducing livestock grazing, and establishing new wilderness study areas ("WSAs"), JMH Op. at 1, 4-5.

Rebuttal: NEPA does not compel an agency to adopt or to consider a specific alternative, merely that a range of reasonable alternatives be considered and the range must be evaluated in the context of the proposed action, not the universe of possible agency actions.

² Equally high-potential areas in Utah (3.5 million acres) and Colorado (about 800,000 acres) have been the subject of *de facto* withdrawals to protect alleged wilderness characteristics. Despite significant industry interest, no leases issued on these lands for eight years.

2. The Solicitor concluded that BLM erred in limiting the scope of the JMH CAP to the decisions made in the 1997 Green River Resource Management Plan ("Green River RMP"), JMH Op. at 4.

Rebuttal: BLM reasonably limited the alternatives to the land use decisions made in the 1997 RMP because the purpose of the proposed action was to prepare a coordinated activity plan³ which by definition implements the RMP. Limiting the alternatives to variations of implementing the Green River RMP was consistent with the decisions already made with respect to livestock grazing, wilderness study, and land available for mineral development.

3. The Solicitor concluded that mineral development is not preeminent and if there are cultural, big game habitat, and wilderness resources, BLM must consider closing the entire area to mineral development, reducing livestock grazing, and protecting wilderness values by designating new WSAs, *Id.* at 2, 5.

Rebuttal: FLPMA makes mineral development and livestock grazing principal multiple uses and directs BLM to manage the public lands to meet national energy and mineral needs. Thus, FLPMA requires BLM to explain the consequences to national and local energy and mineral supplies, as well as the economy before closing public lands to mineral development. The Wyoming BLM's assumption that it could not justify closing 575,000 acres of high energy potential public lands to mineral development complies with FLPMA and NEPA, and certainly does not violate federal law.

4. The Solicitor concluded that BLM must consider designating new WSAs, *Id.* at 5.

³ In November, 2000, BLM revised the land use planning handbook and changed the term "coordinated activity plan" to "implementation plan" but did not change the substantive meaning of a coordinated activity plan. BLM Land Use Planning Handbook H-1601-1, Glossary, pp. 1,3.

Rebuttal: DOI lacks statutory authority to designate new WSAs after expiration of the wilderness review program on October 21, 1991, 43 U.S.C. §1782. While BLM apparently adopted a new Wilderness Inventory Handbook on January 12, 2001, it did so without complying with FLPMA's notice and public comment procedures, 43 U.S.C. §1739(e), or with rulemaking, *Id.* §1740. Given the lack of legal authority to undertake wilderness inventory and review, *infra* at 29-36, and the failure to follow public comment procedures, the 2001 WIH is unlawful and should be withdrawn.

5. Based on the Solicitor's conclusions, Secretary Babbitt directed the Wyoming BLM office to issue a supplemental DEIS which would identify the preferred alternative as a modification of Alternative B. This new preferred alternative would close the entire study area to mineral development and leasing, withdraw the area from mining under the 1872 Mining Law, reduce livestock grazing, and designate new WSAs, *Id.* at 5; Secretary's Direction Dec. 22, 2000.

Rebuttal: By adopting significant policy changes, the Secretary's Direction changes the proposed action from a coordinated activity plan to implement the RMP to a plan revision, which requires a new scoping notice and a new DEIS. NEPA and FLPMA planning regulations require that the public have notice when the proposed action is significantly changed. This is the only way the public can be notified and have the chance to raise new issues or bring forward information previously assumed to not be relevant to the decision being considered.

II. FACTUAL BACKGROUND

In 2000, environmental groups apparently urged Secretary Babbitt to designate this area a national monument under the Antiquities Act, 16 U.S.C. §431. While Secretary Babbitt visited the

area in November 2000, federal law prohibits any national monuments in Wyoming, 16 U.S.C. §431a. Instead, Secretary Babbitt issued the direction which is the subject of this Petition.

A. Jack Morrow Hills DEIS

The decisions which prompt this Petition arise from DOI and Environmental Protection Agency ("EPA") review of the JMH CAP DEIS, which involves approximately 575,000 acres of public land located in the Green River Resource Area of southwestern Wyoming. The coordinated activity plan was to address mineral leasing stipulations, which had been deferred in the Green River RMP adopted in 1997. JMH CAP DEIS at 1-2; Green River RMP Record of Decision at 4. Activity plans are site-specific plans written to implement decisions made in land use plan and usually select and apply best management practices to meet land use plan objectives. BLM Land Use Planning Handbook, H-1601-1, Glossary pp. 1,3.⁴ BLM did not change planning for fluid mineral resources, H-1624-1. See www.blm.gov/nhp/200/wo210/landuse.htm.

The Green River RMP designated an 80,000 acre area of critical environmental concern ("ACEC"), which is closed to energy development to protect scenic qualities and cultural resources. The Green River RMP also determined that the balance of land in the Red Desert should be available for energy development. JMH CAP DEIS at i, 14, 40, 604-608 (Appendix 3). The Green River RMP also rejected environmental group comments urging new WSAs.

The DEIS addresses the decisions and actions deferred in the Green River RMP, including how to provide for oil and gas development in the 575,000 acre area outside of the ACEC.

⁴ "These plans have traditionally been referred to as 'activity plans' . . . and have been focused on single resource programs. In this Handbook, these types of plans are referred to as 'implementation plans' to reflect their role in implementing land use decisions. Implementation plans are increasingly interdisciplinary and are focused on multiple resource program areas, rather than a single program, to reflect the shift to a more watershed-based or landscape-based approach to management." BLM Land Use Planning Handbook at IV-1.

Consistent with the principles of a coordinated activity plan, the DEIS considers four alternatives in detail, working from the decisions made in the Green River RMP.

Alternative A would maximize resource uses, such as mineral development, livestock grazing, and similar activities, while staying within the framework of the Green River RMP, as much as possible. Management emphasis would be primarily for use, development, and intensive management while resource values would be protected to the extent required by applicable law. Oil and gas leasing would occur in the core area and throughout the planning area. JMH CAP DEIS at 14.

Alternative B allows for the maximum protection and enhancement of wildlife habitat, recreation use, watershed, riparian, and cultural resources, Native American concerns, and other sensitive resources, as provided in the Green River RMP. Oil and gas leasing could occur except for the core area and big game migratory corridors. *Id.*

Alternative C, the Preferred Alternative, provides for resource tradeoffs to blend the possibly opposing objectives of resource utilization and resource protection, subject to the decisions previously adopted in the Green River RMP. This alternative provides for staged oil and gas leasing and related development. Portions of the planning area would be available for leasing, with appropriate mitigation in the form of lease stipulations, upon completion of the JMH CAP. Other areas would be withheld from leasing consideration until BLM determined that adequate big game habitat would be available. Habitat fragmentation is one of the major issues to be addressed in the planning area. BLM planned to do an evaluation to define how much habitat should be withheld and which mitigation measures are necessary. Range improvements would be limited, and some guidelines for vegetation use would be provided. Compared to Alternative A, more mineral location

withdrawals would be pursued and there would be more limitations on range improvements. Compared to the No Action Alternative and Alternative A, there would be more emphasis on vegetation use for watershed and wildlife habitat needs. Compared to Alternative B, there would be less emphasis on vegetation use for watershed and wildlife habitat needs. *Id.*

Alternative D or the No Action Alternative would continue present management direction and practices based on the approved Green River RMP decisions. This alternative would close the core area to oil and gas leasing but the remainder of the federal fluid mineral estate in the planning area would be open for mineral leasing subject to lease stipulations based on the specific site. JMH CAP DEIS at 14, 40.

B. Opinion of the Solicitor

The DOI Solicitor reviewed the DEIS and concluded, *inter alia*, that: (1) BLM's assumptions that FLPMA required consideration of the public land for mineral development was erroneous and that BLM should have considered withdrawing the area from mining and closing it to all new mineral leasing, using FLPMA's management decision process, 43 U.S.C. §1712(e); (2) BLM should reconsider decisions for livestock grazing and is not limited to the decisions made in the Green River RMP; (3) BLM should consider designating new WSAs, even though the wilderness inventory and study were rejected for reconsideration in the Green River RMP; (4) the DEIS fails to comply with NEPA because it failed to consider a sufficiently broad conservation alternative, which would close the entire area to mineral development, designate new WSAs, and reduce livestock grazing; and (5) NEPA compels issuance of a supplemental DEIS.⁸ DOI Secretary Babbitt

⁸ The Solicitor Opinion is not signed and does not identify the author. Petitioners understand that the author is Mark Squillace, who wrote the opinion while on leave from his position as a professor at the University of Wyoming Law School. Mr. Squillace's publications express his views on public land (continued...)

not only adopted the Solicitor's opinion but instructed BLM to change the preferred alternative to a modified conservation alternative, essentially mirroring the recommendations of the Solicitor.

C. Environmental Protection Agency Review

When EPA reviewed the JMH CAP DEIS in fall of 2000, it identified several deficiencies, including the need for additional information. EPA Letter to BLM, Oct. 2, 2000. EPA found that the Preferred Alternative, which made fluid mineral leasing almost a "foregone conclusion," contradicted the deferral language in the Green River RMP, which focuses on whether fluid mineral leasing is appropriate. EPA recommended restating the Preferred Alternative to read: "Leasing will be available for fluid minerals in the core area only after information has determined impacts to the sustainability of the elk herd and other sensitive environments are minimal." EPA Comments at 4.

EPA also found that the JMH CAP DEIS does not identify or present all environmental impacts in a clear format and lacks supporting information in the preferred alternative to open additional acreage to fluid mineral leasing in the core area. *Id.* 5-6. EPA concluded that the alternatives failed to consider the scoping comments which "overwhelmingly identified the sensitive nature of the area and requested BLM use a protective or preservation approach." EPA determined that BLM must justify the reasons for not selecting a preservation alternative or should have included the Wyoming Outdoor Council alternative in the DEIS. *Id.* at 7.

*[...continued]

management. See e.g. *Applying the Park City Principles to the Endangered Species Act*, 32 LAND & WATER RES. J. 385 (1996); *An American Perspective on Environmental Impact Assessment in Australia*, 20 CLMEL 43 (1995); *The Enduring Vitality of the General Mining Law of 1872*, XVIII ENV. L. J. 1020 (1985); and *Cooperative Federalism Under the Surface Mining Control and Reclamation Act: Is This Any Way To Run a Government?*, XV ENV. L. J. 10039 (1985). Mr. Squillace represented environmental groups in the following cases: *Friends of the Bow v. Thompson*, 124 F. 3d 1210 (10th Cir. 1997); *Powder River Basin Resource Council v. Babbitt*, 54 F. 3d 1477 (10th Cir. 1995); *Dorrance v. McCarthy*, 957 F. 2d 761 (10th Cir. 1992); and *Coalition for Sustainable Resources, Inc. v. U.S. Forest Service*, 48 F. Supp.2d 1303 (D. Wyo. 1999).

EPA concluded that corrective measures may require changes to the preferred alternative or application of mitigation measures to reduce impacts. *Id.* at 1. The EPA comments, which appear to be the basis for the Solicitor's legal analysis, do not address the public policy regarding mineral development, although EPA admitted that multiple use management is difficult to achieve. *Id.* Moreover, EPA fails to address the fact that the comments supporting the preservation approach were primarily form letters and cards, not substantive and material comments. *See Committee for Nuclear Responsibility, Inc. v. Seaborg*, 463 F.2d 783, 787 (D.C. Cir.), *cert. denied* 404 U.S. 917 (1971); *Geer v. FHA*, 975 F. Supp. 47, 60 (D. Mass 1997).

D. BLM Implementation of Jack Morrow Hills Direction

1. BLM Instruction Memorandum

On January 12, 2001, Henri Bisson as acting BLM Director issued an Information Bulletin extending the Solicitor's Opinion to all BLM land use planning. Information Bulletin 2001-42, Recently Issued Solicitor's Opinion Regarding Land Use Planning (Jan. 12, 2001). Seven days later, Sylvia Baca as acting BLM Director signed an extensive instruction memorandum which sets out in detail how all BLM offices must implement the principles in the Solicitor's Opinion. Instruction Memorandum, 2001-075, Bureauwide Implementation of Solicitor's Opinion on JMH CAP (Jan. 19, 2001). Petitioners understand that BLM is implementing the direction in current land use planning efforts in northwestern Colorado.

Baca states that the Solicitor's Opinion must be applied to all BLM land use plans and associated NEPA documents with respect to the scope of analysis, the handling of new information and inventory data, the design of alternatives, and the status of land use decisions during the amendment or revision process. Baca emphasizes that BLM must comply with the Solicitor's

Opinion as it deals with WSAs and other unique or important resources that might merit protection. *Id.* at 1-2. BLM cannot exclude an alternative, such as a mineral withdrawal if there are other important resources, such as lands with wilderness character that could be managed as WSAs. The Instruction Memorandum directs BLM to not limit a plan amendment or revision to the decisions made in the original planning document and to completely analyze the impacts of all alternatives in a NEPA document. *Id.* at 2.

Baca directs BLM to follow the newly revised Land Use Planning Handbook and the even more recently adopted Wilderness Inventory and Study Procedures Handbook (Jan. 9, 2001), plus other program guidance in considering new WSA proposals and new information. *Id.* at 3 (referring to the WIH which allows BLM and the public to nominate lands with wilderness character for consideration as new WSAs and to provide information on how existing plans inadequately dealt with their wilderness character). BLM must use the scoping process to solicit and accept new information about public lands, including wilderness character, threatened or endangered species, and significant mineral resources. *Id.*

The Instruction Memorandum also finds that BLM cannot use a narrow interpretation of multiple use to limit either the range of alternatives or analysis. Thus, BLM must consider precluding mineral development and reducing livestock grazing when there are unique and important resources. Similarly, BLM must consider any "credible" WSA proposal. *Id.* at 4-5.

The Instruction Memorandum directs BLM to delay implementing any decision, subject to valid existing rights, if it might impair the resources identified for protection. Thus, even if a current land use plan allows for oil and gas development, BLM not only can but should delay proposed

action or impose new conditions to protect such resources until the NEPA process is complete. *Id.* at 5.

2. New Wilderness Inventory and Study Procedures

On January 9, 2001, BLM issued a new Wilderness Inventory and Study Procedures Handbook, H-6310-1 which contains policy, direction and guidance for all future wilderness inventories and designation of WSAs under Sections 201 and 202 of FLPMA. This 2001 wilderness inventory handbook purports to apply to all new land use planning. See www.blm.gov/nhp/efoia/wo/fy01/ib2001-043.html. The revised WIH faces serious legal issues, including whether BLM has any legal authority to conduct additional wilderness inventory and study or to make recommendations, *infra*, pp. 29-36, and whether the WIH could be adopted without notice and comment and rulemaking. 43 U.S.C. §1739(e) (public comment required for all programs, management decisions, and guidelines); and §1740 (implementation of FLPMA must have informal APA rulemaking). The original WIH which the 2001 document purports to replace, had extensive public comment. BLM does not explain the reasons it had no public comment to adopt a radically different policy and process. The adoption of the 2001 Wilderness Inventory Handbook, only days before Secretary Babbitt left, makes the entire policy of questionable legal weight.

III. JMH CAP DEIS ALTERNATIVES DO NOT VIOLATE NEPA

A. NEPA Does Not Obligate BLM to Consider New WSAs

Much of the Solicitor's Opinion is based on the premise that the JMH CAP DEIS violates NEPA for failing to consider an alternative which would close the entire area to mineral leasing and development, reduce livestock grazing, and designate new WSAs. Indeed, the Solicitor clearly

substitutes his judgment for that of the land manager. Just as a court cannot substitute its judgment for that of the agency, *Vermont Yankee Nuclear Power Co. v. NRDC*, 435 U. S. 519, 545 (1978), an agency lawyer should not use his position as a legal advisor to compel a particular land management decision. The EPA's and the Solicitor's conclusions that any preferred alternative must reduce the environmental impacts to a minimum and consider alternatives outside the scope of the project simply because they were raised during scoping, express a viewpoint, *not* a NEPA mandate.

NEPA imposes action-forcing procedures that require an agency to consider the environmental consequences. *Colorado Environmental Coalition v. Dombeck*, 185 F. 3d 1162, 1171-72 (10th Cir. 1999). However, NEPA does not mandate a particular result, *Id.* at 1172, citing *Holy Cross Wilderness Fund v. Madigan*, 960 F. 2d 1515, 1522 (10th Cir. 1992). Nor does NEPA require an agency to adopt the least-damaging alternative. *Id.* See also *Robertson v. Methow Valley Citizens Council*, 490 U. S. 332, 250-51 (1989) (holding that NEPA does not require mitigation measures, the Court wrote: "In this case for example, it would not have violated NEPA, if the Forest Service after complying with the Act's procedural prerequisites, had decided that the benefits to be derived from downhill skiing at Sandy Butte justified the issuance of a special use permit, notwithstanding the loss of 15 percent, 50 percent, or even 100 percent of the mule deer herd.") Thus, EPA's conclusion that BLM must protect all resources by reducing all impacts to a minimal level does not reflect the case law.

The law, which applies to the particular agency and the planned course of action, defines what is a range of reasonable alternatives. 40 C.F.R. §1502.14. Only the "no action" or no change alternative is required by NEPA regulations. *Id.* §1502.14(d). Moreover, if there are unresolved conflicts then the agency must consider an alternative that addresses alternative uses of the available

resources. 42 U.S.C. §4332(2)(E). *Bob Marshall Alliance v. Hodel*, 852 F. 2d 1223, 1228 (9th Cir. 1988), *cert. denied*, 489 U. S. 1066 (1989). The Solicitor's Opinion concludes that the JMH CAP DEIS must consider an alternative which considers no leasing as a way to resolve the resource conflicts. However, if the issue is addressed in a previous NEPA document, the agency need not revisit the issue again. In *Hell's Canyon Alliance v. U.S. Forest Service*, 227 F. 3d 1170 (9th Cir. 200), the court held that the Forest Service did not have to consider no motorized boating, because it had previously decided to allow a minimum level.

While the failure to consider a viable alternative may make an EIS inadequate as a matter of law, *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992), an agency enjoys discretion to determine which alternative course of action to analyze in detail. Moreover, the range of alternatives is defined by the agency's identified objective. Thus, an agency does not have to consider an alternative that does not achieve the objective of the project. In *City of Alexandria, VA v. Slater*, 18 F. 3d 862 (D.C. Cir. 1999), the DC Court of Appeals reversed the district court and held that the Department of Transportation did not have to consider a 10-lane bridge, because NEPA does not define an agency's objectives nor does it require an agency to elevate environmental issues over other objectives. Other courts have reached the same conclusion, even in the context of federal land management, when conservation of wildlife habitat or scenic beauty is one of the statutory objectives for the agency. *Hell's Canyon Alliance*, 227 F.3d at 1182; *Presidio Golf Club v. National Park Service*, 155 F. 3d 1153, 1160-61 (9th Cir. 1998).

All of the JMH CAP DEIS alternatives are based on the decisions made in the Green River RMP. Thus, the no-action alternative was no change in current management as approved four years before. Since the purpose of the project is to implement the Green River RMP, this is proper.

Friends of Southeast's Future v. Morrison, 153 F. 3d 1059 (9th Cir. 1998) (distinguishing *Bob Marshall* and finding that the "no action" alternative discussion was sufficient to provide "a baseline against which the action alternatives are evaluated in compliance with NEPA."); *see also American Rivers v. F.E.R.C.*, 201 F.3d 1186, 1201 (9th Cir. 2000); *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026, 18027 (1981). Alternative B in the JMH CAP DEIS did not address wilderness study or reducing livestock grazing, because the objectives of the proposed action were to address implementing the Green River RMP and to resolve whether and how additional mineral leasing would occur. NEPA does not compel the Secretary's sweeping conservation alternative, which it actually falls outside the project and is inconsistent with NEPA.

B. DEIS Correctly Based Alternatives On Land Use Decisions Already Made

The Solicitor also erred in concluding that NEPA compelled BLM to consider, let alone adopt, an alternative which closed the entire analysis area to energy development, designated new WSAs, and reduced livestock grazing. JMH Op. at 2. EPA concluded that the CEQ regulations, 40 C.F.R. §1502.14, only require BLM to show that the preservation alternative identified during the scoping process was not reasonable. EPA then concludes: "Since the public is interested in seeing a preservation alternative presented in the EIS, it does not seem unreasonable to include the alternative in the EIS. If BLM has determined that it does not have the ability to choose that alternative due to conflicts with previous leases or with mineral leasing laws then the alternative can still be presented with that information. EPA Comments at 7.

The DEIS did in fact consider other alternatives "as possible methods of resolving the issues but were eliminated from detailed study because they were unreasonable or not practical due to

technical, legal, or policy factors." JMH CAP DEIS at 11. More specifically, the DEIS considered, *inter alia*, closure to livestock grazing and closure to mineral leasing. With regard to closing the area to mineral leasing, the DEIS concludes: "Since much of the planning area has already been leased for federal minerals and portions of the area are developed, this option would not help resolve issues in the short term. Resource conflicts tend to be located in specific areas, not planning area wide, and closing the entire area would not be reasonable," *Id.* at 12. BLM also cited FLPMA's requirement that public lands remain open to leasing unless withdrawn and as contrary to BLM's multiple-use mandate. The DEIS explains that closure was considered in the Big Sandy/Salt Wells Oil and Gas EA and the Green River RMP and deemed unacceptable, and remains so. "The entire planning area does not have conflicts with oil and gas development and, thus, the issue of no mineral leasing or development in the entire planning area is not appropriate. However not leasing portions of the planning area, in response to other identified resource needs, is addressed in the alternatives analyzed in detail." *Id.*

The wilderness conservation alternative, as revised by the Solicitor and Secretary Babbitt, also falls outside the scope of the project, because it revisits the original decisions made in the Green River RMP and the earlier WSA decisions made in 1980 and 1991. This conclusion is equally true for the proposed changes in livestock grazing advocated by environmental groups and the Wyoming Game and Fish. Certainly, they lobbied for significant grazing reductions in the Green River RMP and do not offer new information not previously considered by BLM. Thus, there is no objective basis to find that BLM must consider and adopt such an alternative. This is equally true for existing versus new WSAs.

The Solicitor's conclusion that the DEIS violates NEPA for failing to reconsider the decisions made in the Green River RMP adopted only a few years before finds no support in NEPA, FLPMA, the implementing regulations, or case law. NEPA does not require an agency to revisit decisions already final. NEPA only requires an agency to consider reasonable alternatives within the scope of the proposed action and the objectives to be achieved. BLM already considered public comment supporting new WSAs during the Green River RMP process and concluded that any authority to designate WSAs expired.

C. Solicitor Ignores Limited Objectives of Coordinated Activity Plan

The Solicitor misunderstands the objective of a coordinated activity plan and converts the JMH CAP DEIS to a major plan amendment or plan revision. 43 C.F.R. §1610.5-7. The Solicitor concludes that the Wyoming BLM should have considered alternatives outside of the Green River RMP, because this is a plan amendment. JMH Op. at 4. However, the Federal Register notice described this as a coordinated activity plan, not plan amendment or revision. Notice of Intent to Prepare A Coordinated Activity Plan for the Jack Morrow Hills Area and Notice of Scoping Meetings, 63 Fed. Reg. 5963 (Feb. 8, 1998). The notice states: "The JMH CAP will supplement the Green River RMP providing decisions for fluid mineral leasing and mineral location within the 'core area' . . . The EA or EIS will be used to determine if an amendment of the Green River RMP will be needed. The existing Green River RMP will guide management actions in the JMH CAP area other than those deferred decisions for fluid mineral resources and locatable mineral activity in the 'core area.' "

The planning regulations make it very clear that if BLM were to change the resource allocation decisions made in the RMP, this would be a plan revision, not a plan amendment or a

coordinated activity plan. A plan revision includes changes based on new or revised policy or changes in circumstances that affect either the entire plan or major portions. While a plan amendment can include changes in the decisions of an approved plan, the definition of the plan revision shows that if the change affects a large part of the plan, then a revision is appropriate. 43 C.F.R. §1610.5-6. This interpretation is supported by the fact that the coordinated activity plan, now called an implementation plan, is intended to implement the plan, not to amend or revise it. The changes required by the Secretary's direction, the JMH Opinion, and the Instruction Memorandum require a plan revision, because it affects 575,000 acres of land and reflects major shifts in agency policy.

D. Situation Does Not Call for Supplement to DEIS

Even if the Solicitor and the EPA were correct that the JMH CAP DEIS was fatally deficient, the changes proposed do not fit the situation for a supplement, which applies when there is new environmentally significant information. 40 C.F.R. §1502.9(c)(1), *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 384 (1989). By changing the objectives of the proposed action and adopting significant new policies, BLM must issue a new notice of scoping and a second DEIS. Even EPA did not recommend a supplement to the DEIS.

IV. STATUTORY POLICIES

The Solicitor opinion concludes that mineral development is not preeminent and that BLM must consider withdrawing the public lands to protect resources. JMH Op. at 2, 4. Secretary Babbitt concluded that big game populations, cultural resources (including mining camps), raptors, and WSAs warrant closing the entire area to further mineral leasing and mining. Babbitt Direction.

The Solicitor is correct that public lands are to be managed for multiple use and it need not include the use with the greatest economic return or all of the listed uses at one time. JMH Op. at 3. However, the Solicitor adroitly omits the mineral and energy policy objectives for public lands that require BLM to make a clear case when it does decide to close the public lands to energy or mineral development. FLPMA identifies mineral development as a principal multiple use, 43 U.S.C. §1702(l), and such primacy imposes an obligation on BLM to ensure that any withdrawal be made only after careful consideration of the consequences, *Id.* §714(c)(2).

DOI's treatment of this issue also ignores the fact that public lands are unreserved and are not set aside for a specific purpose, such as a wildlife refuge to conserve wildlife and habitat, or a park to conserve scenic and biological resources. Instead, the public lands are presumed available for mineral development, unless there has been a public determination to close the public lands and that determination was made in compliance with the procedures.

A. FLPMA Policy on Mineral Development

The Jack Morrow Hills opinion and the Instruction Memorandum assume that BLM has an overriding obligation to protect cultural resources and wildlife, and must therefore withdraw the land from mineral development and issue a management decision whenever there is a possible conflict. This elevates the cultural resources and alleged wilderness values over the principal uses affected, including mineral development and livestock grazing. It also ignores the history of FLPMA which shows Congress' overriding concern was that the unreserved public lands be available to address national dependence on foreign sources of oil and to provide sources for domestic energy needs. The Solicitor's omission of these important policies and underlying history further demonstrates that the Secretary's direction and Instruction Memorandum are inconsistent with applicable law.

1. Mining and Materials Policy Act

FLPMA directs that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands, including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." 43 U.S.C. §1702(a)(12). The Mining and Minerals Policy Act provides:

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries; (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, minerals, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

For the purpose of this section "minerals" shall include all minerals and mineral fuels, including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section.

30 U.S.C. §21a. Contrary to the Solicitor's conclusion that BLM has no obligation to provide for mineral development, FLPMA directs BLM to ensure that the public lands are available for mineral development, including energy development.

2. Mineral Development As a Principal Multiple Use

FLPMA's definition of multiple use is almost identical to the definition of multiple use which applies to National Forests. *Compare* 16 U.S.C. §529 with 43 U.S.C. §1702(c). FLPMA,

however, makes a significant change by elevating several of the enumerated multiple uses to the status of principal or major multiple uses. These "principal or major" multiple uses include domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. 43 U.S.C. §1702(l).

The evolution of the definition of multiple use appears to reflect a compromise between the traditional definition and the recommendation of the Public Land Law Review Commission ("PLLRC") that Congress adopt dominant use management and reassert its constitutional authority over the public lands.⁶ While Congress did not adopt dominant use as such, it did create a higher class of land uses that are entitled to greater congressional oversight and emphasis. The House Report on FLPMA explained: "The term 'principal or major uses' is defined for purposes of Section 202 of the bill. They represent the uses for which Congressional oversight is particularly needed." H. Rep. No. 1163, 94th Cong., 2nd Sess., pp. 1, 5 (May 15, 1976) *reported in* 1976 U.S. CODE CONG. ADMIN. NEWS 6175, also reprinted as *Legislative History of the Federal Land Policy and Management Act of 1976*, Prepared for the Senate Committee on Energy & Natural Resources Pub. No. 95-99 p. 435 (April 1978) ("*Legislative History*"). For example, if the Secretary closes more than 100,000 acres of public land to one of these principal uses, he must notify Congress and amend the land use plan before doing so. 43 U.S.C. §1712(e).

While mineral development may not be preeminent, it is a principal use. The Solicitor's criticism that the JMH CAP DEIS did not consider closing the entire area to mineral development

⁶ Congress established the Public Land Law Review Commission ("PLLRC") in the Classification and Multiple Use Act of 1964, 43 U.S.C. §1111-1115 (repealed by §703(a) of Pub. L. 94-579 Oct. 21, 1976), to review all public land laws and to make recommendations regarding land uses, repeal of laws, and legislation. It is widely recognized that FLPMA reflects the PLLRC recommendations made in *One-Third of the Nation's Land: A Report to the Congress*, PLLRC (1970) pp. 51-53.

and reducing livestock grazing ignores the fact that mineral development and grazing are principal uses. The Solicitor's Opinion elevates protection of culture resources and wilderness values over mineral development and grazing. While the critique also identifies the need to protect wildlife habitat, another principal use, the Solicitor's analysis and BLM's Instruction Memorandum focus more on wilderness values and largely ignore the importance of mineral development and grazing. Even if BLM were to elect to prefer one principal use over another, the number of acres in the area requires Congressional notification.

The direction charted by Secretary Babbitt closes the entire area without weighing the impacts on energy development and grazing as against cultural resources and wilderness.⁷ No effort is made to assess the impacts of the JMH Opinion or Instruction Memorandum on energy production, even though this area is deemed to have high potential and the policy will certainly affect existing leases and, thus, development.⁸ When viewed in this light, the Solicitor's conclusions regarding the failings of the JMH CAP DEIS are even more clearly a matter of personal judgment, not a reflection of the law, and contradict other important public policies.

⁷ The decisions assume that grazing conflicts with these uses, despite the fact that grazing is expressly provided for in wilderness areas, 16 U.S.C. § 1133(d)(3), and there is no indication that grazing is destroying either cultural resources or wilderness values. Indeed, the record only shows that the Wyoming Game and Fish wants more forage allocated to elk, another grazing animal with the same or greater impacts on the resources.

⁸ The Solicitor dismisses any impact on energy production stating that 2/3 of the area is already under lease. JMH Op. at 4. This does not address the fact that drilling cannot occur unless the company drilling can control the reservoir drained by the well or the field. The analysis does not address where the land is leased and how the decision not to issue any new leases might interfere with development. Nor does the analysis acknowledge that the land management policy would certainly impose new restrictions on development, thereby chilling exploration due to regulatory delays and even denials. The Solicitor's opinion incorrectly assumes that these factors will not affect development.

B. Closing Public Land To Mineral Leasing Requires A Withdrawal

The Solicitor also concluded that Section 204 withdrawal mandates do not apply to mineral leasing. JMH Op. at 3. This adopts DOI's litigation position that the Secretary's discretion to issue or not issue a mineral lease makes FLPMA's withdrawal procedures irrelevant and inapplicable. See e.g. *Marathon Prod. Co. v. Babbitt*, 966 F. Supp. 1024 (D. Colo. 1977) (finding that discretion to deny lease makes agency decision unreviewable), *aff'd per curiam*, 166 F.3d 1221 (10th Cir.), *cert. denied*, 528 U.S. 819 (1999). The Solicitor does not examine FLPMA or the problems inherent in trying to extend the decisions dealing with issuance of an individual lease to the closure of more than half a million acres to new mineral leasing. These omissions make the analysis both incomplete and ultimately wrong.

1. FLPMA Changed the Executive Branch's Withdrawal Power

FLPMA imposes a series of procedural requirements before public lands can be closed to mineral development. Only the Secretary can withdraw public land, 43 U.S.C. §1714(a), notice must be published in the Federal Register, *Id.* §1714(b), the withdrawal is limited to a term of 20 years, *Id.* §1714(c)(1), if it is more than 5,000 acres, the Secretary must file a detailed report with Congress, *Id.* §1714(c)(2), and Congress can veto any such withdrawal if a resolution doing so is passed by both houses of Congress.⁹ These procedures apply regardless of whether the question is mining or mineral leasing and FLPMA does not give the Secretary discretion not to comply.

⁹ Many legal scholars have concluded that Congress' veto authority in FLPMA is unconstitutional after the decision in *I.N.S. v. Chadha*, 462 U.S. 919, 1013 (1983). However, one district court which considered the argument affirmed the power of a congressional committee to direct the Interior Secretary to withdraw land from coal leasing. *National Wildlife Federation v. Clark*, 577 F. Supp. 825 (D. D.C. 1984).

2. Application of Withdrawal Procedures

The Solicitor attempts to limit Section 204 withdrawal procedures to hard rock mining and to exclude all mineral leasing. JMH Op. at 4. FLPMA's definition of a withdrawal precludes this interpretation. FLPMA defines a withdrawal as:

[W]ithholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. §1702(j). A sale of a mineral lease is a sale of the mineral rights for a stated term and is thus a "sale of public lands."¹⁰ When parcels of lands are offered for leasing, the list is called a lease sale list. Any decision of BLM to withhold the Jack Morrow Hills area from sale under the Mineral Leasing Act to protect culture, wildlife, and wilderness values falls squarely within the definition of a withdrawal.

Certainly Congress believed that FLPMA's withdrawal procedures applied to mineral leasing when it directed the Interior Secretary on several occasions to issue emergency withdrawals. *Pacific Legal Foundation v. Watt*, 529 F. Supp. 982 (D. Mont. 1981), *modified*, 539 F. Supp. 1194 (D. Mont. 1982); Coggins, Wilkinson, Leshy *Federal Public Land and Resources Law*, (Foundation Press 3rd ed. 1993) p. 302 (detailing House Interior Committee direction to withdraw public lands under Section 204(e) (emergency withdrawals).

¹⁰ FLPMA defines public land as "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership..." (excluding Outer Continental Shelf and lands held in trust for benefit of Eskimos and Aleuts). 43 U.S.C. §1702(e).

3. FLPMA Changed Previous Withdrawals Policy

Before FLPMA was adopted, the President had no practical limitations on his authority to close public lands to mineral development. Wheatley, C., *A Study of Withdrawals and Reservations, Public Domain Lands*, pp. vii, 491-525 (PLLRC 1969).¹¹ The power to withdraw public lands was originally derived from the President's implied withdrawal power. *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915) (holding that the President had implied power to close the public lands to mineral development since Congress had acquiesced for many years when the President exercised such authority). Congress enacted the Pickett Act of 1910, 43 U.S.C. § 141 (repealed Pub. L. 94-579 Oct. 21, 1976), to grant the President power to withdraw public land, so long as it was temporary and did not apply to metalliferous metals. The term temporary became meaningless since DOI rarely reconsidered withdrawals and classifications. Wheatley at 129-130. Once withdrawals and classifications were made, the public lands remained withdrawn even when the majority of the withdrawals and classifications were no longer needed. *One-Third of the Nation's Land* at 52.

The PLLRC recommended a complete overhaul of public land classifications and withdrawals, because, as of 1971, more than 78% of the public lands were closed to mineral development. The PLLRC concluded that "Congress [should] assert its constitutional authority by enacting legislation reserving unto itself exclusive authority to withdraw or otherwise set aside public lands for specified limited purpose uses and delineating specific delegation of authority to the Executive as to the types of withdrawals and set asides that may be effected without legislative action." *Id.* at 2. As part of the overhaul, the PLLRC recommended that Congress adopt uniform

¹¹ In an exhaustive report to the PLLRC, Charles Wheatley documented the problems concerning withdrawals, land classifications, and other segregative land policies. Wheatley at 34-44a.

standards and procedures by which public land would be closed to mineral development and such withdrawals would be periodically reviewed and revoked.

FLPMA's provisions establishing and limiting the Secretary's withdrawal authority reflect PLLRC's concern that the Executive Branch had arbitrarily closed federal land to mineral use. *Id.* at 52-53; *Legislative History* at 670. The PLLRC criticized the haphazard and unnecessary use of withdrawals and classifications that affected virtually all of the public domain and recommended limiting the Secretary's withdrawal authority and requiring the Secretary to review existing withdrawals. *One-Third of the Nation's Land*, at 51-52.

In addition to enacting Section 204, Congress abolished the Executive Branch's implied power, including that of the Secretary, to withdraw land and took the unusual step of identifying the judicial decision it sought to reverse.

The main authority used by the Executive to make withdrawals is the "implied" authority of the President recognized by the Supreme Court in *U.S. v. Midwest Oil Co.* (236 U.S. 459). The bill would repeal this authority and, with certain exceptions, all identified withdrawal authority granted to the President or the Secretary of the Interior . . . The bill substitutes a general grant of authority to the Secretary of the Interior to make and modify withdrawals subject to certain procedural requirements.

Legislative History at 459.

4. Section 204's Application to Mineral Leasing

Congress clearly intended Section 204 to apply to all forms of mineral development. Both the PLLRC and Congress were concerned that withdrawals and public land classifications denied access for mineral leasing as well as access for mining under the 1872 Mining Law. Rising in support of Section 204, during the House of Representatives debate, Congressman Skubitz articulated the concern that federal land be available for mineral exploration and development, including oil and gas.

We must end what often has been a historic pattern of casual and even reckless withdrawal of public lands. It is essential that Congress be informed of, and able to oppose if necessary, withdrawals which it determines not to be in the best interests of all the people. Further, this legislation emphasizes that our goal should be the multiple use of Federal lands consistent with the preservation and protection of our Nation's resources.

At present, almost two-thirds of all public lands have been withdrawn for single-purpose use, primarily the preservation of wilderness. It seems inconsistent for some to decry our country's increasing energy dependence on foreign imports, and yet, at the same time, to continue restricting the development of more and more of our Federal lands. Why, for example, do we continue to so severely restrict the discovery and mining of valuable minerals or energy resources available to use within the United States?

Legislative History at 670.

The withdrawal procedures, review of existing withdrawals, and direction to review and revoke land classifications and withdrawals were to update the previous closures of public lands, open public lands for development and ensure that current and future decisions were based on actual need plus public involvement. Thus, the premise that mineral leasing is excluded in Section 204 contradicts the very reason that Congress determined that these changes were needed.

5. Wyoming Case Law Applies to Jack Morrow Hills Issue

The Solicitor also concludes that two decisions of the Wyoming district court finding that agency leasing moratoria must comply with Section 204 procedures are wrong and need not be followed. JMH Op. at 3 citing *Mountain States Legal Foundation v. Andrus*, 499 F. Supp. 383 (D. Wyo. 1980) ("*MSLF I*") and *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466 (D. Wyo. 1987) ("*MSLF II*"). The Solicitor assumes that the decision in *Bob Marshall Alliance v. Hodel*, 852 at 1229-30 is controlling and that the two Wyoming decisions did not involve land use planning. The Solicitor is wrong on both counts.

The Solicitor ignores the difference between the *MSLF* complaints which only asked the District Court to direct DOI to comply with FLPMA's procedures and *Marathon Oil Co. v. Babbitt*, which sought issuance of particular leases nominated and then pulled by BLM shortly after the sale. The *Bob Marshall* case concerned whether the court could cancel seven leases issued in the Deep Creek Further Planning Area of Montana's Lewis and Clark National Forest. The Forest Service had issued the leases based on an environmental assessment and the district court concluded that an EIS was required and canceled the leases. The Ninth Circuit distinguished the *MSLF I* decision, 852 F.2d at 1229-30, and further disagreed with the holding. However, the facts in *Bob Marshall* fit the *Udall v. Tallman* situation as to specific lease decisions.

The Solicitor is also incorrect when he concluded that neither of the *MSLF* cases involved land use planning. *MSLF I* concerned the Forest Service veto of all mineral leasing applications where the land was being considered for wilderness recommendation, even though these lands were to be open for all forms of mineral development until December 31, 1984. 16 U.S.C. §1133(d). The Wyoming federal court held that FLPMA's withdrawal procedures must be followed before the Forest Service could close millions of acres of high-energy potential land to mineral leasing. *MSLF I*, 499 F. Supp. at 391. *MSLF II* involved another Forest Service leasing moratorium during which time the Forest Service was writing land use plans and NEPA documents for the Shoshone and Bridger-Teton National Forests. The United States again argued that Section 204 did not apply to mineral leasing, that it needed to complete land use planning before it could issue mineral leases, and that it could not review the environmental effects until it wrote an EIS. The Wyoming federal court rejected the government's arguments finding that land use planning was not a valid basis to not issue mineral leases, 42 U.S.C. §8855, and the NEPA's procedures must stand aside for mandatory

procedures under the Energy Security Act and FLPMA's direction. *MSLF II*, 668 F. Supp. at 1472-73.

The Department of Justice never appealed either decision, possibly to avoid a precedent in the Tenth Circuit. In both cases, DOI proceeded to act on pending lease applications within the disputed area and actually issued the leases rather than withdraw the land. Because BLM was a defendant in both cases, the Wyoming BLM naturally understands that preemptive decisions to close tracts of land to mineral leasing require compliance with withdrawal procedures and public notification.

V. DOI HAS NO AUTHORITY TO DESIGNATE NEW WSAs AFTER 1991

A. FLPMA Section 603

Section 603 of FLPMA, 43 U.S.C. §1782, is the only statutory authority for BLM to study public lands for wilderness and to make recommendations to Congress. Before FLPMA was enacted, unlike the Forest Service, the Wilderness Act did not authorize BLM to study or make wilderness recommendations. *Legislative History* at 109. While BLM did identify primitive areas and managed them to protect those resources, these primitive areas were not WSAs and did not lead to agency recommendations to Congress for wilderness designation. *Id.* FLPMA granted BLM 15 years to inventory, study, and to make recommendations to the President as to which areas in the public domain should be designated for wilderness. 43 U.S.C. §1782(a).

The wilderness study program was divided into three steps; (1) identification of WSAs through an exhaustive nation-wide inventory, (2) study of each area, and (3) recommendations to the President. For the inventory and designation of WSA phase, BLM did the inventory in two steps, initial and intensive, to determine which units met the minimum criteria of 5,000 acres in size,

roadless, and having wilderness character.¹² BLM completed the inventory phase by November 1980, based on internal agency deadlines. The public lands not identified and designated as WSAs were released to multiple use, including energy development. Every state BLM office completed the inventory within the deadline.

The study phase took the balance of the 15 years and was done on a state by state basis, either as part of FLPMA's land use planning process or as a separate EIS. Each BLM state office forwarded the final recommendations to the Interior Secretary, who forwarded these recommendations to the President before October 21, 1991.

Until the Utah wilderness reinventory started in 1976, BLM assumed that the October 1991 deadline ended the wilderness study process for the public lands. "In FLPMA, by contrast [to the 1964 Wilderness Act], Congress gave the Secretary until October 21, 1991 (and the President two additional years) to make recommendations to it concerning public land wilderness, and it placed no time limit on itself in making final decisions for or against wilderness." Leshy, J.D. *Wilderness and Its Discontents – Wilderness Review Comes to the Public Lands*, 1981 AZ. St. L. J. 361, 395. Secretary Babbitt also acknowledged that the Section 603 authority expired. See Babbitt Letter to Cong. Hansen, July 24, 1996, "I also agree with you that FLPMA's Section 603 no longer provides authority to inventory BLM land in Utah for wilderness values." However, Secretary Babbitt took the position that Sections 201 and 202 authorized BLM to conduct a wilderness inventory and to designate new WSAs.¹³ As explained below, any such interpretation of the law contradicts the plain

¹² These factors incorporate the definition of wilderness found in the Wilderness Act, 16 U.S.C. §1131.

¹³ Secretary Babbitt's conclusions can be traced to a series of legal memoranda delivered by the Southern Utah Wilderness Alliance to both Secretary Babbitt and former Interior Solicitor Leshy in 1993 and 1994.

language of the statute, the history, and more importantly, BLM's own interpretation during the time when it was implementing FLPMA.

Because Section 603 so clearly limited the Secretary's authority regarding the wilderness review program, DOI has had to argue that it could conduct a wilderness inventory under Section 201 of FLPMA to reconsider BLM's original decisions that the public lands did not have wilderness character and that it could designate new WSAs under its land use planning authority in Section 202 and Section 302 (avoid undue and unnecessary degradation). BLM never issued new regulations adopting this interpretation although it did adopt a new wilderness inventory handbook just days before Secretary Babbitt left. *Supra* at 11-12.

B. Wilderness Inventory Authority Expired

DOI first argued that it could conduct a new wilderness inventory pursuant to Section 201 of FLPMA, 43 U.S.C. §1711(a), when Secretary Babbitt decided to redo the Utah wilderness study to justify increasing the wilderness recommendations from 1.2 million acres to 5.7 million acres in 1976. DOI argued that FLPMA's direction to conduct inventories of the public lands from time to time justified reexamining the wilderness character of the public lands originally found to lack wilderness character in 1980.

FLPMA's legislative history does not support this interpretation, since the wilderness inventory authority arises from Section 603. Congress explained the differences between the inventory for the wilderness review process and inventories for land use planning when it wrote:

This provision [Section 201] directs the Secretary of the Interior and Agriculture to inventory the lands (except wilderness) under their respective jurisdiction, and subject to the availability of funds, to identify such lands and provide state and local governments with data from the inventory. The section reenacts the Forest Service inventory provisions of the Humphrey-Rarick Act of 1974.

Report on H.R. 13777, House Committee on Interior and Insular Affairs, Rep. No. 4-1163 (May 15, 1976), reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 6175, 6179. Section 311 of H.R. 13777 provided for wilderness inventory and review and this section was adopted with some changes as Section 603 by the conference committee.

The only litigation on this issue did not address DOI's theory. Instead, the Tenth Circuit held that the State of Utah had no standing, since there was no right of public involvement in the inventory phase under Section 201, *State of Utah v. Babbitt*, 137 F.3d 1193, 1207, 1215 (10th Cir. 1998). The Tenth Circuit could have but declined to find that BLM had authority to conduct the wilderness inventory.

C. Section 202 Planning Process Does Not Include Designation of WSAs

BLM's reliance on Section 202 as authorizing designation of WSAs is even weaker. Most notably, Section 202 never uses the term wilderness and the planning regulations also do not authorize designation of WSAs. Nor for that matter does Section 302 provide any authority to designate public lands for wilderness study or to adopt special management.

BLM appears to rely on several administrative decisions holding that inventory units which did not meet the size criteria or did not have independent wilderness character, could be designated as WSAs under Section 202. These cases arose during the 15 year time-frame when BLM was conducting the Section 603 wilderness review. *Sierra Club v. Watt*, 608 F. Supp. 305 (E.D. Calif. 1985); *Tri-County Cattleman's Association*, 60 IBLA 305, 314 (1981); *Don Coops, et al.*, 61 IBLA 300, 306 (1982); *State of Nevada, et al.*, 62 IBLA 153, 157 (1982); *Michael Huddleston, et al.*, 76 IBLA 116, 121 (1983); *Inyo Board of Supervisors*, 63 IBLA 321 324 (1982); *ASARCO, Inc.*, 64 IBLA 50, 61 (1982).

Only on a few occasions has BLM invoked its general management authority to designate new Section 202 WSAs and conduct suitability studies since the expiration of the fifteen year wilderness review period. *See e.g.*, 61 Fed. Reg. 36755 (July 12, 1996); 58 Fed. Reg. 45528 (August 30, 1993); 59 Fed. Reg. 15451 (April 1, 1994); 58 Fed. Reg. 33842; 56 Fed. Reg. 41370 (August 20, 1991); 56 Fed. Reg. 40341 (August 14, 1991).

The infrequency of BLM's post-1991 Section 202 WSA designations supports BLM's lack of authority to create new WSAs upon the expiration of the wilderness review period. These narrow circumstances logically include (1) recent lands acquired by the BLM that could not be inventoried and studied in time to be a part of the Secretary's final recommendations to the President, and (2) the release of contiguous areas managed by other agencies upon which the WSAs (established during the original inventory) depended for their wilderness suitability. *Id. See also Wilderness Society et al.*, 119 IBLA 168, 170 (1991)(BLM inventory of lands acquired in 1989 through land exchange resulted in a determination that the unit was not suitable as a WSA).

The numerous wilderness study documents produced by BLM show the consistent interpretation that Section 603 was the sole authority to designate WSAs and once done, there was no basis to reconsider or reopen the process. *E.g.* BLM's 1978 Wilderness Inventory Handbook stated that Section 202 subsized parcels would be considered as part of the Section 603 process, WIH, pp. 4,6. Elsewhere, BLM wrote: "[T]he WSAs were determined based on systematic process, including public input and appeals. The inventory reflects evaluation and collective professional judgments by numerous BLM personnel, and this phase of the process has been concluded." 1990 Utah BLM Statewide Wilderness FEIS, Vol. I at 39.

Pursuant to administrative appeals in the 1980s, BLM did a second inventory for parts of Utah and wrote at the conclusion "Those that are found to have wilderness characteristics of their own will become WSAs under Section 603 of FLPMA. Those that are found to have wilderness characteristics only in association with contiguous lands managed by another agency will become WSAs under Section 202 of FLPMA. Both groups of WSAs will be studied by 1991." 51 Fed. Reg. 4658 (Feb. 6, 1986). BLM included other non-qualifying units as part of the Section 603 wilderness review. BLM Interim Management Plan for WSAs, 1995 Handbook at p. 2; BLM IMP Handbook H-8550-1 (Nov. 10, 1987).

The above examples show that until recent years, BLM acknowledged that the wilderness review process was limited by time to 15 years and that Section 603 was the sole source of authority. The Instruction Memorandum and the 2001 WIH attempt to find authority in FLPMA which simply does not exist. If Sections 202 and 302 authorized unlimited review for wilderness, then there would have been no reason for Congress to authorize a program and to impose a deadline. Equally significant is the fact that BLM complied with the deadlines, apparently believing until 1996 that the Section 603 October 1991 deadline meant what it said.

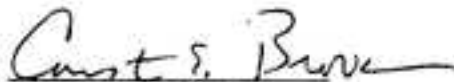
VI. CONCLUSION

The Solicitor's Opinion and Secretary's Direction are of substantial concern to residents of Wyoming and the individuals who either ranch, explore for natural gas, or mine. The Baca Instruction Memorandum and the 2001 Wilderness Inventory Handbook elevate what has been a relatively isolated controversy to a national problem. If BLM retains this direction, it can be a requirement to comply with both the Instruction Memorandum and Wilderness Handbook. It is not an exaggeration to say that tens of millions of acres will come out of energy production or potential

energy production. Most of the areas affected involve natural gas, as opposed to oil, and thus this issue directly affects domestic sources of natural gas. The Petitioners believe that the previous administration is wrong as a matter of law. Equally important, the previous administration simply chose to ignore the important public policy factors. Both the legal issues and the public policy issues provide independent grounds for reversal. The combination of legal error and public policy makes a compelling case to reverse the Secretary's decision, and rescind the opinion of the Solicitor, the BLM Instruction Memorandum 2001-075, and the revised Wilderness Inventory Handbook.

Dated: May 25, 2001.

Respectfully submitted,



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APPENDIX B



THE SECRETARY OF THE INTERIOR
WASHINGTON

MEMORANDUM

To: Director, BLM

From: Secretary *B. Fran*

Date: December 22, 2000

Subject: Jack Morrow Hills Coordinated Activity Plan

By this memorandum, I am transmitting to you the opinion of the Solicitor regarding the draft environmental impact statement for the Jack Morrow Hills Coordinated Activity Plan. I concur in his opinion.

Having reviewed this Plan with my staff, and having visited the area, I am greatly impressed by the unique and outstanding natural resources contained in the planning area. With one of our Nation's largest unfenced areas outside of Alaska, its big game populations are among the largest and healthiest in the lower 48. It contains one of the most diverse and numerous concentrations of raptors anywhere. Significant cultural resources, including remnants of the Oregon and Mormon Pioneer trails and the mining camps of South Pass, only add to the area's allure. Seven wilderness study areas are found here, and are treasured for their aesthetic beauty and the recreational opportunities they afford. It is no wonder that former Governor Leslie Miller recommended this area as the Great Divide Basin National Park as far back as 1935. Others, like Tom Bell, have worked hard for many years to promote special protection for this area.

The planning area contains significant oil and gas resources and, as the Solicitor notes, much of it has already been leased. Some oil and gas development is occurring, especially in its southwestern portion. Any decision to protect the outstanding natural resources of the Red Desert must be accomplished in a manner that protects the valid existing rights of these mineral owners. To the extent it is consistent with our paramount concern for protecting the natural resources in the planning area, some additional leasing might be allowed, but the presence of finite mineral resources should not deprive future generations of the natural and aesthetic wonders of the Great Divide Basin.

A final decision as to how this area should be protected will necessarily be made by a future Administration. Nonetheless, it is my responsibility to place the BLM on a track that helps to insure that, after a full opportunity for the public participation, an appropriate decision will be

made to protect this unique area and its outstanding resources. To that end, I ask that you direct the Wyoming BLM office to propose the conservation alternative as its preferred alternative in the supplemental draft EIS that the Solicitor has determined should be prepared.



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

MEMORANDUM

To: Secretary
From: Solicitor *John L. Lesby*
Date: December 22, 2000
Subject: Jack Morrow Hills Coordinated Activity Plan

At your request, I have reviewed the draft environmental impact statement (DEIS) for the Jack Morrow Hills Coordinated Activity Plan and for the reasons that follow, I believe a revised or supplemental draft EIS that would more fully conform to applicable legal requirements should be prepared for public comment and review. Also, because the BLM has revised its land use planning manual and handbook since the first draft DEIS was published, the new draft should conform with the procedures set forth in those documents.

I. Erroneous Assumptions

Several assumptions made in the DEIS are not consistent with existing federal land management laws. These assumptions are especially problematic under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, because they result in the BLM's failure to consider certain management options for the planning area that may be reasonable in light of the significant biological, cultural, and aesthetic resources that are identified in the DEIS. The NEPA regulations adopted by the Council on Environmental Quality, which are binding on federal agencies like the BLM, require agencies to "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14(a).

For example, the DEIS suggests that withdrawing the area from mineral location and closing it to leasing would be "contrary to the BLM's multiple use management mandate in FLPMA." DEIS, p. 12. It also relies on a provision of the BLM Manual which provides that "public lands shall remain open and available for mineral exploration unless (to do otherwise) . . . is clearly justified in the national interest." *Ibid*; BLM Manual, 3000.06A.¹ The DEIS also states that "[r]esource conflicts tend to be located in specific areas, not planning area wide, and closing the entire area [to oil and gas leasing] would not be reasonable." DEIS, p. 12. This statement is

¹ We have been unable to locate a copy of the May, 24, 1987 policy memorandum cited in the DEIS. The language quoted there is, however, found in the referenced section of the BLM Manual.

"[r]esource conflicts tend to be located in specific areas, not planning area wide, and closing the entire area [to oil and gas leasing] would not be reasonable." DEIS, p. 12. This statement is reinforced by a later statement on the same page that "closure to leasing of federal oil and gas resources in the planning area continues to be unacceptable."

FLPMA's definition of multiple use expressly recognizes that the most "judicious use" of land may involve the use of some land "for less than all of the resources," and that consideration must be given "to the relative values of the resources and not necessarily the combination of uses that will give the greatest economic return...." 43 U.S.C. § 1702(c). Thus, foreclosing mineral exploration and development on even a sizeable tract of federal land does not violate the statutory definition of multiple use, and is not *per se* unreasonable.

FLPMA also provides that an area may be withdrawn or "excluded"² from mineral development when such development may be incompatible with "maintain[ing] other public values in the area." See 43 U.S.C. § 1702(j) (definition of withdrawal in FLPMA). FLPMA requires that, for withdrawal proposals exceeding 5,000 acres, the Secretary submit certain kinds of information and analyses to the appropriate congressional committees about the withdrawal. See 43 U.S.C. § 1714(c)(2). But FLPMA does not make mineral activity the preeminent use of federal lands; indeed, FLPMA's statement of policies makes clear that mining activity is only one of many values to be promoted on the public lands. See 43 U.S.C. § 1701(a).

Here, the DEIS identifies significant wildlife and other resource values.³ Whether or not they implicate "the national interest," they are sufficiently significant that BLM is required, in its NEPA documentation, to consider their protection through mineral withdrawals or exclusions. Accordingly, it was not appropriate for the DEIS to refuse to consider such actions.

With regard to non-leasable minerals, it seems an entirely reasonable option to withdraw all or most of the planning area from such mineral development. This is because, as the DEIS notes, the area appears to have limited potential for non-leasable mineral development, and very little current mining activity. DEIS, pp. 217-218; Map 48. Given the uniqueness and importance of the resources that merit protection, NEPA and its implementing regulations require the BLM to consider the withdrawal of any lands where non-leasable mineral development would be inconsistent with protection of other values. Such an alternative is plainly reasonable and, as noted above, the CEQ regulations require agencies to "[r]igorously explore and objectively evaluate all *reasonable* alternatives." 40 C.F.R. § 1502.14(a) (emphasis added). So, for

² As described below, mineral exclusions, which totally eliminate one or more uses from public lands, are provided for in FLPMA's land use planning process under 43 U.S.C. § 1712(c).

³ These resources are described in some detail in the DEIS, and include cultural, archaeological, and historical resources, DEIS at 205-209; recreational resources, DEIS at 219-220; potential wilderness areas, DEIS at 235-244; and significant wildlife resources, including endangered and threatened species, DEIS at 235-244.

example, if hard rock mining is inconsistent with the protection of sage grouse leks, the BLM should consider withdrawing the land around these leks as may be necessary or appropriate to protect sage grouse habitat. Moreover, the fact that the area has a low potential for hard rock mineral development should, if anything, support withdrawal of the lands, since the economic impact of such a withdrawal will likely be minimal.

With regard to leasable minerals, and most specifically to oil and gas leasing, closing much of the planning area would not likely have a significant impact, especially in the short term. This is because approximately two-thirds of the planning area has already been leased, and oil and gas development will still be allowed in those areas even after a closure. As the DEIS correctly notes, lessees will retain development rights on their existing leases. DEIS, p. 13. But the DEIS does not seem to take this point fully into account in predicting the likely impact from closing the area to further leasing. Rather, the DEIS appears to assume that the leasing restrictions imposed under Alternative B would apply as if there were no pre-existing leasing. See DEIS, p. 382. The DEIS analysis should accordingly address the scope of oil and gas development that is likely, given the valid existing rights held by lessees. Under these circumstances, it is not "unacceptable" - as the DEIS assumes - to close the planning area or a substantial portion of the planning area to new mineral leasing. Instead, it is a reasonable alternative that ought to be carefully considered in the NEPA documentation.

BLM has long taken the view that land use plans are an appropriate process by which to decide whether or not to exclude lands from mineral leasing, mineral sales, and other discretionary actions. BLM Land Use Planning Handbook at H-1601-1, II.A. ("Land use plans ... identify lands ... that are closed to certain uses.") This practice of using land use planning to exclude lands from discretionary actions such as mineral leasing is lawful. Section 202(e) of FLPMA authorizes the BLM to make land use planning decisions that totally eliminate certain types of land uses. 43 U.S.C. § 1712(e). The same subsection clearly speaks in discretionary terms for using the formal withdrawal procedures of section 204 of FLPMA to implement management decisions, except where lands are closed to entry and location under the General Mining Law of 1872. See 43 U.S.C. § 1712(e)(3) ("Withdrawals made pursuant to section 1714 of this title may be used in carrying out management decisions, but public lands shall be removed from ... the operation of the Mining Law of 1872 ... only by withdrawal action pursuant to section 1714 of this title or other action pursuant to applicable law.") (Emphasis added.)

Two Wyoming federal district court decisions suggest that, in certain contexts, the BLM must follow FLPMA's withdrawal procedures before it can refuse to process lease applications. *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466 (D. Wyo. 1987); *Mountain States Legal Foundation v. Andrus*, 499 F. Supp. 383 (D. Wyo. 1980). The reasoning of these decisions has been rejected by the Court of Appeals for the Ninth Circuit, see *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229-1230 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989), and I believe the Ninth Circuit correctly states the applicable law.

Even in Wyoming, where the Jack Morrow Hills planning area is found, I believe the two

In sum, I believe that applicable public land law gives the Secretary three ways to decide not to lease tracts of public lands for oil and gas or other minerals: (1) exercising his statutory discretion under the Mineral Leasing Act, *see Udall v. Tallman*, 380 U.S. 1 (1965); *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414 (1931); (2) excluding lands from leasing through FLPMA's section 202 planning process; or (3) withdrawing the land through FLPMA's section 204.

The DEIS also suggests that reduction or elimination of livestock grazing is necessary only where it would "significantly" conflict with other management objectives. DEIS, p. 12. Livestock grazing may be reduced or eliminated on BLM-managed land when necessary or appropriate to protect other values, or where rangeland health standards are not being met. Thus, especially in the context of the "conservation alternative" the BLM must not assume that "significant" conflicts with other resources must be shown in order to reduce or eliminate livestock grazing.

The DEIS inappropriately limits the scope of the analysis to the "framework of the *Record of Decision and approved Green River RMP*." DEIS, p. 14 (emphasis in original). Specifically, it states that for the "no action" alternative, management would be based on implementing the Green River RMP. For all of the other alternatives, the goal is to "stay[] within the framework of the *Record of Decision and approved Green River RMP ... as much as possible*." *Id.* This is not

⁴ *Mountain States v. Andrus*, 499 F. Supp. 383 (D. Wyo. 1980) arose in the context of an administrative review of the suitability of certain national forest lands for inclusion in the wilderness system. *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466 (D. Wyo. 1987) involved a decision by the Forest Service to suspend leasing pending completion of land use planning activities under the Rangeland Resources Planning Act, 16 U.S.C. § 1604, as amended by the National Forest Management Act of 1976, 16 U.S.C. § 1604.

⁹ The Court noted that "the Secretary . . . was authorized to reclassify and withdraw land from grazing altogether and devote it to a more valuable or suitable use." 529 U.S. 728, ____ (2000), (slip op. at 9). The same reasoning applies to mining.

accurate. BLM prepared the Jack Morrow Hills Coordinated Activity Plan in response to concerns raised during the development of the Green River RMP. DEIS, p. 1. As the DEIS notes, the CAP was designed to "provide more specific management direction to prevent or address conflicts among potential development of energy resources, recreational activities and facilities, and more specific management direction for other land and resource uses in the planning area, including livestock grazing, important wildlife habitat and other important resources." *Ibid.* The Green River RMP was completed in 1997 but it deferred certain mineral development decisions until completion of the Jack Morrow Hills CAP. *Ibid.* As the DEIS itself recognizes, "the JMHCAP will amend the Green River RMP," *id.*, p. 2, and thus it was unnecessary to limit the scope of the DEIS to the framework of the RMP. Moreover, as noted earlier, NEPA requires the BLM to consider *all* reasonable alternatives, including those outside the framework of the RMP. 40 C.F.R. § 1502.14. Thus, it was not proper to design the alternatives so that they all fit within that framework.

A related concern is BLM's statement that it "will not consider any additions or changes to the existing WSAs in the planning area" because such consideration would be inconsistent with the record of decision on the Green River RMP and a wilderness inventory that was prepared in 1978-1979. DEIS, p. 13. As indicated above, consistency with the RMP is not a proper basis upon which the BLM may refuse to address issues raised during the planning process. Moreover, because the location of WSA boundaries within the planning area could very well affect planning decisions, the JMHCAP should address new information regarding WSA boundaries.

Section 603(c) of FLPMA prohibits the BLM from eliminating or reducing existing WSAs that were identified under section 603(a). Such WSAs must be managed so as not to impair their suitability for designation as wilderness "until Congress has determined otherwise." 43 U.S.C. 1782(c). But BLM does have the authority, under section 202 of FLPMA, to designate new WSAs, which can be adjacent to existing section 603 WSAs. Thus, while existing WSA's cannot be eliminated in the JMHCAP, the BLM may designate new WSAs in accordance with section 202. In deciding whether to do so, the BLM may rely upon existing WSA information to the extent that it remains accurate. But the BLM may not refuse to consider credible new information which suggests that the WSA boundaries identified in the late 1970's do not include all public lands within the planning area that have wilderness characteristics and are suitable for management as wilderness.

II. Alternatives

While the range of the four alternatives addressed in the EIS seems reasonable, the erroneous assumptions identified above resulted in unnecessarily limiting the conservation focus of both the preferred alternative and Alternative B. To address this problem, the BLM should prepare a supplemental EIS that more clearly describes the focus or theme of each alternative, and insures that the discussion of each alternative clearly reflects that theme and is consistent with the law as explicated in this memorandum.

For example, instead of obliquely stating that Alternative A "would generally reduce the level of land use restrictions and allow more development of mineral resources," Alternative A should be described as focusing on resource development. The DEIS should make clear, in this alternative as in all others, that conservation of wildlife and aesthetic resources would be assured to the extent that such protections are either required by law, or otherwise compatible with a resource development focus. (This will help insure that the alternative is "reasonable.")

Likewise, Alternative B should be described as focusing on the protection of biological, aesthetic, and cultural resources, rather than on "increas[ing] the level of restrictions on land uses and allow[ing] less development of mineral resources." This discussion should indicate that reasonable development activities might still be allowed, but only to the extent that such activities are consistent with this alternative's paramount concern for resource conservation.

What is now described in the DEIS as the preferred alternative should be clarified as accommodating both resource development and resource conservation, recognizing that such accommodation will likely lead to some unavoidable conflicts in favor of one or the other objectives.

To provide further clarity, descriptive terms should be used to identify the alternatives. For example, alternative A might be called the resource development alternative, Alternative B the conservation alternative, and what is now the preferred alternative the accommodation alternative. As described above, all of these alternatives are consistent with FLPMA's definition of "multiple use," so it would not be accurate to describe the accommodation alternative as the "multiple use" alternative.

III. Conciseness

The CEQ regulations provide that the text of a final EIS "shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages." 40 C.F.R. § 1502.7. This EIS addresses some complex issues, but at 719 pages (counting appendices, with well over 400 pages of basic text), it is not sufficiently concise. In an attachment to this memorandum, I have offered several suggestions for shortening this document, and I urge the BLM to consider these and other measures for making this document less cumbersome.

I understand that substantial work has gone in to producing this draft EIS, and it contains much useful information. Given the importance of this matter and the high level of public interest, however, I recommend that the BLM prepare a second draft document for public review and comment, as described in this memorandum.

I concur:


Secretary


Date

ATTACHMENT
SUGGESTIONS FOR IMPROVING AND SHORTENING THE JACK MORROW HILLS DEIS

Set forth below are several suggestions for shortening and improving the Jack Morrow Hills DEIS. First, the section analyzing alternatives and describing environmental consequences both contain significant redundancies. Each subject area is addressed four separate times (in conjunction with the discussion of each alternative), often with identical or very similar language each time. I recommend that each of these issues be discussed just once in the alternatives section and once in the environmental consequences section. This will significantly reduce the size of the document and make it easier for the public to understand the difference between each of the alternatives with respect to each issue.

Second, the CEQ regulations provide that the "Affected Environment" and "Environmental Consequences" sections of the EIS "should present the environmental impacts in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14. The DEIS will be more consistent with these regulations, and it will be much easier for the public to understand the differences in the environmental consequences for each alternative approach to livestock grazing. For example, if one needs to read only one section of the DEIS, rather than flipping back and forth among four separate sections.

Third, Table 2-1, which was apparently designed to make it easier for the public to compare alternatives, cannot fairly serve that purpose because, at more than 100 pages, it is simply too long. The first four pages do not even purport to offer a comparison and can probably be eliminated entirely. Consider trying to recast this Table so that there is only one fairly general statement under each resource category. The size of this Table could be dramatically reduced if it referenced pages in the EIS where one could find further details. It might also be easier to understand if it were reorganized to indicate alternatives from the least to most restrictive alternative (or vice versa). Also, instead of repeating the same information with just slight variations, the Table would be easier to follow if the first box were used as a benchmark, and the boxes after the first column simply indicated the differences from the first box.

Fourth, Table 4 (which is 61 pages long) could probably be eliminated in its entirety if the narrative portion of the DEIS is recast, as suggested above, with the environmental consequences of each alternative analyzed together in the text.

Finally, to the extent possible, maps that contain similar or related data should be combined and produced in color. This will allow the interested public to better understand the cumulative and interrelated nature of such disparate matters as the biological resources and mineral resources of the area, while reducing the length of the DEIS.

APPENDIX C

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

January 12, 2001

In Reply Refer To:
1600 (WO-200) P

EMS TRANSMISSION 01/17/2001 Information Bulletin No. 2001-042

To: All Washington Office and Field Officials

From: Director

Subject: Recently Issued Solicitor's Opinion Regarding Land Use Planning

This Information Bulletin transmits the December 22, 2000, Solicitor's Opinion on the subject of the Jack Morrow Hills Coordinated Activity Plan, as well as the Secretary of the Interior's memorandum of the same date transmitting the Opinion to the Director, Bureau of Land Management (BLM). This Opinion has widespread implications to BLM's National Environmental Policy Act (NEPA) and planning efforts beyond Jack Morrow Hills, as it speaks to the manner in which the BLM prepares all of its land use plans and activity plans and their associated NEPA documents.

If you have any questions relating to this matter or to its implementation, please feel free to contact Ted Milesnick (tmilesnj@blm.gov) or Andrew Strasfogel (astrasfo@blm.gov) in the Washington Office Planning, Assessment, and Community Support Group at (202) 452-5110.

Signed by:

Henri R. Bisson

Acting Director

Authenticated by:

Barbara J. Brown

Policy & Records Group, WO-560

2 Attachments 1 - Memorandum to the Director, Jack Morrow Hills Coordinated Activity Plan (1 p) 2 - Memorandum to the Secretary, Jack Morrow Hills Coordinated Activity Plan (7 pp)

APPENDIX D

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

<http://www.blm.gov>

January 19, 2001

In Reply Refer To:
1610/1790 (210) P
Ref. IB No. 2001-042

EMS TRANSMISSION 01/19/2001
Instruction Memorandum No. 2001-075
Expires: 09/30/2002

To: All WO and FO Officials

From: Director

Subject: Bureauwide Implementation of Solicitor's Opinion on Jack Morrow Hills
Coordinated Activity Plan

Program Area: Planning and National Environmental Policy Act (NEPA) Processes;
Wilderness; Oil and Gas Leasing.

Purpose: This Instruction Memorandum (IM) provides guidance on how to apply the December 22, 2000, Solicitor's Opinion on the subject of the Jack Morrow Hills Coordinated Activity Plan to BLM's planning and NEPA processes and projects. The Opinion was provided to BLM's field offices through Information Bulletin 2001-042.

Background: The Jack Morrow Hills planning area covers 574,800 acres of Federal land in southwest Wyoming. The Jack Morrow Hills Coordinated Activity Plan (CAP) Draft Environmental Impact Statement (Draft EIS), released in June 2000, addresses certain fluid mineral leasing decisions and some locatable mineral decisions that were deferred in the Green River Resource Management Plan (RMP). The Solicitor's Office reviewed the Draft EIS and issued a Solicitor's Opinion on December 22, 2000, questioning the consistency of several assumptions and analytical approaches in the Draft EIS with existing Federal land management and environmental laws. The Opinion calls for preparation of a revised or supplemental Draft EIS for public comment that more fully conforms to applicable legal requirements.

The December 22, 2000, Opinion has implications for the Bureau of Land Management's (BLM's) NEPA and planning efforts beyond Jack Morrow Hills. It applies to all BLM land use plans and their associated NEPA documents, particularly with respect to scope

of analysis, addressing new information or inventory data, range of alternatives to be addressed, and status of land use decisions during the amendment or revision process. This policy is outlined below.

Policy/Action: BLM officials must fully consider the conclusions and requirements of the Solicitor's Opinion when scoping and preparing plan amendments, plan revisions, and supporting environmental documents. They must also comply with the Solicitor's Opinion with respect to wilderness study areas (WSAs) or other unique and important resources that merit protection. The particular issues of scope of analysis, addressing new information or inventory data, range of alternatives, and status of land use decisions during the amendment or revision process are discussed more fully below.

Scope of Analysis

The Land Use Planning Handbook (H-1601-1), Chapter VI, provides specific guidance for determining whether changes in planning decisions or the supporting NEPA analysis are warranted. This guidance applies even if the scope of a plan amendment or revision initially appears to be limited to one or two issues (for example, oil and gas leasing decisions).

This conclusion is supported by the Jack Morrow Hills Opinion, which raises specific points with respect to scope. The Opinion states:

The [Draft EIS] inappropriately limits the scope of the analysis to the 'framework of the *Record of Decision and approved Green River RMP*.' . . . As the [Draft EIS] notes, the CAP was designed to 'provide more specific management direction to prevent or address conflicts among potential development of energy resources, recreational activities and facilities, and more specific management direction for other land and resource users in the planning area, including livestock grazing, important wildlife habitat and other important resources.'" (pages 4 and 5)

More specifically to wilderness, the Opinion goes on to state:

BLM does have the authority, under section 202 of FLPMA, to designate new WSAs, which can be adjacent to existing section 603 WSAs. . . . In deciding whether to do so, the BLM may rely upon existing WSA information to the extent that it remains accurate. But the BLM may not refuse to consider credible new information which suggests that . . . public lands within the planning area . . . have wilderness characteristics and are suitable for management as [WSAs]. (page 5)

Therefore, BLM officials may not so narrow the scope of a planning/NEPA document as to exclude a reasonable range of alternatives to the proposed action (for example, a "no further leasing alternative" or a "nonleasable mineral withdrawal alternative" where the importance of other resources warrants consideration of such alternatives). Additionally, the scope of an amendment or revision should not necessarily be limited to the range or

kinds of decisions made in the original planning document. The point of an amendment or revision is to address new concerns raised about the existing planning document.

The impacts of all alternatives addressed must be fully analyzed in the NEPA document. They must also reflect the actual situation on the ground. As the Opinion points out, the CAP failed to correctly take existing leases into account when analyzing the impacts of restrictions on potential new leases:

As the [Draft EIS] correctly notes, lessees will retain development rights on their existing leases. . . . But the [Draft EIS] does not seem to take this point fully into account in predicting the likely impact from closing the area to further leasing. Rather, the [Draft EIS] appears to assume that the leasing restrictions imposed under Alternative B would apply as if there were no pre-existing leasing. . . . The [Draft EIS] analysis should accordingly address the scope of oil and gas development that is likely, given the valid existing rights held by lessees. Under these circumstances, it is not 'unacceptable' -- as the [Draft EIS] assumes -- to close the planning area or a substantial portion of the planning area to new mineral leasing. Instead it is a reasonable alternative that ought to be carefully considered in the NEPA documentation. (page 3).

Where alternatives are considered, but not further addressed, the document must provide a full and reasonable explanation of why alternatives were not carried forward.

Addressing New Information or Inventory Data

BLM officials will follow the requirements of the Land Use Planning Handbook, the Wilderness Inventory and Study Procedures Handbook, and other program guidance (such as, fluid minerals, rangeland management, threatened and endangered species) in considering new proposals and new information and in determining whether changes in decisions or the supporting NEPA analysis are warranted.

Chapter VI of the Planning Handbook provides examples of regulatory requirements for considering new information or circumstances and examples of new data or information. In general, the determination of whether to amend or revise a land use plan is based on answers to five questions:

1. Does the new information or circumstances provide for new interpretations not known or considered at the time existing decisions were made that could measurably affect ongoing actions?
2. Are the decisions in the current land use plan no longer valid, based on new information or changed circumstances?
3. Are implementation decisions no longer valid, based on new information or changed circumstances?
4. Are effects of ongoing actions, in light of new information or circumstances, substantially different from those projected in existing NEPA analysis?
5. In light of new information or circumstances, are there now inconsistencies between the

ongoing action and the resource-related plans of Indian tribes, State and local governments, or other Federal agencies that render earlier consistency findings invalid?

A "yes" answer to any of the questions suggests the need to revisit existing decisions and/or the NEPA analysis.

The Wilderness Inventory and Study Procedures Handbook provides:

The FLPMA and the BLM planning manual require that the BLM provide opportunity for public participation in [F]ederal public land use decisionmaking conducted under FLPMA. BLM may, from time to time, receive requests from the public suggesting that existing land use plans do not adequately identify public lands that have wilderness characteristics. Further, BLM may itself generate new information suggesting that existing plans may not adequately identify public lands with wilderness characteristics. (page 5)

Therefore, BLM officials will use the scoping process to solicit or accept new information about public land resources, including, but not limited to, areas with wilderness characteristics, threatened or endangered species habitat, significant mineral resources, etc. When credible information is received, BLM must develop alternatives through the planning/NEPA process to allow for public analysis of that information.

Range of Alternatives

The Solicitor's Opinion, the Council on Environmental Quality (CEQ) regulations (supported by BLM's NEPA Handbook), and BLM's Land Use Planning Handbook require BLM's officials to rigorously consider a reasonable range of alternatives in environmental documents.

The CEQ regulations require Federal agencies to "[r]igorously explore and objectively evaluate all reasonable alternatives" in EISs (40 CFR 1502.14(a)). The CEQ regulations also require agencies to address appropriate alternatives in environmental assessments (EAs) (40 CFR 1508.9, with specific reference to section 102(2)(E) of NEPA). A potential or apparent conflict with local or Federal laws or with existing land use plan decisions does not necessarily render an alternative unreasonable, although such conflicts must be considered (Question 2b, NEPA's 40 Most Asked Questions, CEQ, 1981).

Additionally, a narrow interpretation of the concept of multiple use cannot be used to justify limiting the range of alternatives or analysis. As the Solicitor's Opinion points out, the FLPMA definition of multiple use "expressly recognizes that the most 'judicious use' of land may involve the use of some land 'for less than all of the resources,' and that consideration must be given 'to the relative values of the resources and not necessarily the combination of uses that will give the greatest economic return. . . ." Therefore, the Opinion concludes that consideration of "no further leasing," a "nonleasable mineral withdrawal," and "reduction or elimination of livestock grazing" could be reasonable in

the Jack Morrow Hills EIS because of the uniqueness and importance of the resources that merit protection." (page 2 and following)

As discussed under Scope of Analysis above, the Opinion specifically addresses considering new WSA designations within the range of alternatives. BLM policy in the Land Use Planning Handbook (H-1601-1) and the Wilderness Inventory and Study Procedures Handbook (H-6310-1) further support the Opinion. The Land Use Planning Handbook, Appendix C, page 1, specifically states:

III. Special Designations: Special designation decisions identified must be made during the land use planning process when BLM anticipates it may authorize or allow uses which could disqualify inventoried resource values from designation. Special designation decisions may be made during the land use planning process when there is no threat to the inventoried resource.

Appendix C contains further specific guidance and identifies the minimum decisions needed in an RMP:

Designate WSAs to be managed under the interim management policy. (H-8550-1)
Identify management direction for WSAs should they be released from wilderness consideration by Congress.

The Wilderness Inventory and Study Procedures Handbook provides that:

Inventory areas will be evaluated through the land use planning process . . . The planning process will be used to determine whether these areas should be designated as WSAs to be managed under the [Interim Management Policy], BLM Handbook 8550-1. Inventory areas studied under the authority of Section 202 of FLPMA, and not designated as WSAs, will be managed as determined in the plan. (page 19)

Therefore, when BLM officials receive credible proposals for new WSAs during the scoping or public participation processes, they must include one or more alternatives that address designation of WSAs.

Status of Land Use Decisions During the Amendment or Revision Process

While the status of land use decisions during the amendment or revision process is not specifically addressed in the Jack Morrow Hills Opinion, it is a relevant related issue. Therefore, when considering exceptional resources, such as those with wilderness values, BLM officials must delay implementation decisions (subject to valid existing rights) that would impair the resources that BLM has been asked to consider through the planning process.

In support of this policy, Chapter VII of the Land Use Planning Handbook provides

guidance on the status of existing land use planning decisions during the planning process. As provided in Chapter VII of the Handbook:

Existing decisions remain in effect during these processes unless it is determined that this would violate Federal law or regulation. The management decisions of existing land use plans do not change. For example, if current land use plans have designated lands open for a particular use, they remain open for that use. Land use plan decisions may be changed only through the amendment or revision process.

During the amendment or revision process, the BLM should review all proposed implementation actions through the NEPA process to determine whether approval of a proposed action would harm resource values so as to limit the choice of reasonable alternative actions relative to the land use plan decisions being reexamined. Even though the current land use plan may allow an action, the BLM manager has the discretion to modify proposed implementation-level actions and require appropriate conditions of approval, stipulations, relocations, or redesigns to reduce the effect of the action on the values being considered through the amendment or revision process. The appropriate modification to the proposed action is subject to valid existing rights and program specific regulations. If the BLM determines that a proposed action would harm values so as to limit the choice of reasonable alternatives being considered in the planning process, the BLM must consider among the alternatives, the no action alternative. Subject to valid existing rights, proposed actions that cannot be modified to preserve opportunities for selection of any of the reasonable alternatives should be postponed or denied (see 40 CFR 1506.1).

The relationship between proposed decisions and potential WSAs is addressed in BLM's Wilderness Inventory and Study Procedures Handbook:

If the BLM determines that impacts from the proposed action could degrade the wilderness values or the roadless character so as to disqualify the area from further consideration as a WSA, the BLM must consider in the NEPA document an alternative of mitigating or relocating the proposed action to avoid or minimize impacts on wilderness values; and must also consider the alternative of postponing a decision on the proposed action until the wilderness values can be addressed through a new land use plan or plan amendment. (page 6)

Time frame: This IM is in effect upon issuance.

Budget Impact: This IM may affect the planning schedules and scope if individual efforts. This may have budget implications for those projects.

Manual/Handbook Sections Affected: Handbook H-1601-1, Land Use Planning, and Handbook H-1790-1, National Environmental Policy Act; Handbook H-6310-1, Wilderness Inventory and Study Procedures; BLM-1624, Supplemental Program Guidance For Energy and Mineral Resources and H-1624-1, Planning for Fluid Minerals

and RFDs.

Coordination: Preparation of this IM was coordinated with WO-172; WO-310, WO-320, and the Department of the Interior's Office of the Solicitor were offered an opportunity to comment.

Contact: Ann Aldrich, WO-210, (202) 452-7722; Jeff Jarvis, WO-172, (202) 452-5189; Kermit Witherbee, WO-310, (202) 452-0335; Brenda Aird, WO-320, (202) 452-0351.

Signed by:
Sylvia V. Baca
Acting Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

1 Attachment

1- Secretary of the Interior's transmittal memorandum for the December 22, 2000, Solicitor's Opinion on Jack Morrow Hills Coordinated Activity Plan (8 pp)

APPENDIX E



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release

6-122

Date

1/10/2001

Subject

H-6310 - 1 - WILDERNESS INVENTORY AND STUDY PROCEDURES

1. Explanation of Material Transmitted: This transmit H-6310 -1 - WILDERNESS INVENTORY AND STUDY PROCEDURES, which is a handbook that provides the specific policy, general procedures, and guidance for wilderness inventories under the provisions of Section 201 of the Federal Land Policy and Management Act of 1976, (FLPMA) and the designation of Wilderness Study Areas under the provisions of Section 202 of the FLPMA.
2. Reports Required: None
3. Material Superseded: None
4. Filing Instructions:

INSERT:

H-6310-1

(Total: 26 sheets)

Sylvia V. Baca
Acting Director, Bureau of Land Management

**WILDERNESS INVENTORY AND
STUDY PROCEDURES**

H-6310-1

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT**

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H-6310-1-WILDERNESS INVENTORY AND STUDY PROCEDURES

**U.S. Department of the Interior
Bureau of Land Management**

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Glossary of Terms

Appendices

- A. Permanent Documentation File
- B. Inventory Area Evaluation
- C. Road / Way Analysis
- D. Photo Log
- E. WSA Boundary Delineation Guidelines and WSA Map Standards

H-6310-1-WILDERNESS INVENTORY AND STUDY PROCEDURES

.01 Purpose. This Handbook contains the Bureau of Land Management's (BLM) policy, direction, general procedures, and guidance for wilderness inventories under provisions of Sections 201 of the Federal Land Policy and Management Act of 1976 (FLPMA) and the designation of wilderness study areas (WSAs) under provisions of Sections 202 of the FLPMA.

.02 Objective. The objective of this guidance is to establish BLM policy on wilderness inventory procedures, and provide guidance to be used in the land use planning process to determine if inventoried lands should be designated as WSAs managed under the provisions of the Interim Management Policy for Lands Under Wilderness Review (IMP).

.03 Authority. Principal authorities affecting the study of public lands for wilderness values are:

- A. The Federal Land Policy and Management Act of 1976, 43 USC 1701, et seq.
- B. The Wilderness Act of 1964, 16 USC 1131.
- C. National Environmental Policy Act of 1969, (NEPA), 42 U.S.C. 4321.
- D. Council on Environmental Quality (CEQ) regulations at 40 CFR 1500-1508.

.04 Responsibility.

- A. Director, Bureau of Land Management, shall:
 - 1. Establish policy, goals, objectives, and procedures for wilderness inventory and planning on public lands.
 - 2. Establish policy, goals, objectives, and procedures for the management of public lands with wilderness character.
 - 3. Coordinate with BLM State Directors, field offices, other agencies, or entities in conducting wilderness inventory and planning.

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4. Ensure adherence to proper delegations of authority related to decisions, actions, and policies concerning inventory, planning, and interim management protection.
5. Coordinate the development of procedures and guidance for making wilderness considerations as a part of management plan development and other planning processes.
6. Ensure compliance with the NEPA and the CEQ regulations. Serve as liaison with the Department's Office of Environmental Assessment.

B. State Directors, within their respective jurisdictions, shall:

1. Implement policy and provide statewide program coordination and guidance for wilderness inventory and study.
2. Review the field manager's inventory findings and through the use of the land use planning process as regulated at 43 CFR 1600, determine whether an inventory area should be designated as a WSA under the land use planning provisions of Section 202 of the FLPMA.
3. Provide program development, technical management assistance, and funding support to field offices as required to ensure wilderness is adequately considered in planning efforts.
4. Ensure compliance with the NEPA and the CEQ regulations.

C. Field Managers, within their respective jurisdictions, shall:

1. Gather and evaluate public input, as appropriate, for the wilderness inventory.
2. Identify and inventory areas, and determine which inventory areas or portions of inventory areas possess or lack wilderness characteristics.
3. Maintain a detailed file for each inventory area.
4. After consulting with the State Director, determine wilderness study priorities and publicly announce wilderness planning through formal publication of a Notice of Intent for the associated land use planning/NEPA process as required at 43 CFR 1610.2(c).

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5. Assure public involvement in the wilderness study process.
6. Consider wilderness through the appropriate planning process and follow applicable BLM guidance for planning and NEPA compliance.
7. Evaluate proposed actions to determine their potential impact on known or potential wilderness values prior to making a decision on the proposal.
8. Recommend to the State Director those public lands that meet the criteria for identification as WSAs.
9. Protect areas designated as Section 202 WSAs under the provisions of H-8550-1, Interim Management Policy for Lands Under Wilderness Review.

.05 References.

- A. The Federal Land Policy and Management Act of October 21, 43 USC 1701, et seq.
- B. The Wilderness Act of September 3, 1964, 16 USC 1131.
- C. National Environmental Policy Act of 1969, 42 U.S.C. 4321.
- D. Council on Environmental Quality regulations, 40 C.F.R. 1500-1508.
- E. Regulations, 43 CFR Part 8560, Management of Designated Wilderness Areas.
- F. Regulations, 43 CFR Subpart 1601, Planning, and Subpart 1610, Resource Management Planning.
- G. Regulations, 43 CFR Subpart 3802, Exploration and Mining, Wilderness Review Program.
- H. BLM Handbook, H-8550-1, Interim Management Policy and Guidelines for Lands under Wilderness Review.
- I. BLM Handbook H-1600-1, Land Use Planning Handbook

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.06 Policy. Wilderness is a resource which fits within the framework of multiple-use on the public lands. In addition to its value as a setting for primitive recreation or solitude, wilderness can provide a range of benefits to other multiple resource values and uses which are of significance to the American people.

A. The policy of the Bureau of Land Management for the wilderness inventory and study of public lands is as follows:

1. Wilderness Inventory. The BLM will prepare and maintain on a continuing basis an inventory of certain public lands to determine the presence or absence of wilderness characteristics.
2. Identifying Inventory Areas. The BLM will identify those public lands to be inventoried and notify the public of its intent to initiate an inventory to determine the presence or absence of wilderness characteristics.
3. Identifying WSAs. The BLM will use the land use planning process to determine which inventory areas are to be managed as WSAs.

B. Inventory of Acquired Lands. All lands acquired through exchange shall undergo a wilderness inventory. Wilderness values should initially be considered and evaluated as part of the environmental analysis prepared to process the exchange. For acquired lands that do not meet the size criteria, the inventory requirement would be satisfied by documenting the size analysis in the environmental analysis prepared for the acquisition. A wilderness inventory should be completed within 90 days or as soon as practicable after the acquisition. After 90 days, parcels acquired through exchange are subject to mineral entry and to public land laws. Potential impacts, from mineral entry or from the authorization of public land laws, could affect the eligibility of an area to be designated as a WSA. For these reasons, the inventory needs to be promptly addressed to allow time to implement protective measures if needed.

Lands acquired other than by exchange, and not specifically acquired for wilderness purposes, could subsequently be inventoried to determine if they contain wilderness characteristics.

C. Inventory Requirements for Acquired WSA and Wilderness Inholdings. Inholdings acquired within WSAs or wilderness areas should be inventoried only if the land use planning document that designated the WSA or the statute establishing the wilderness area does not automatically designate acquired inholdings as part of the WSA or wilderness area.

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D. Other Public Lands That May Require a Wilderness Inventory. This includes lands identified as possibly having wilderness character by BLM, lands included in proposed legislation, or lands within externally generated proposals that document new or supplemental information regarding resource uses and condition of the lands not addressed in current land use plans and/or prior wilderness inventories.

E. Evaluation of New Information Suggesting That an Area of Public Lands Has Wilderness Characteristics. The FLPMA and the BLM planning manual require that the BLM provide opportunity for public participation in federal public land use decisionmaking conducted under FLPMA. BLM may, from time to time, receive requests from the public suggesting that existing land use plans do not adequately identify public lands that have wilderness characteristics. Further, BLM may itself generate new information suggesting that existing plans may not adequately identify public lands with wilderness characteristics.

In order for such requests from the public to be considered, they should be accompanied by (a) a map which identifies specific boundaries of the area in question; (b) a detailed narrative that describes the wilderness characteristics of the area and documents how that information significantly differs from the information in prior inventories conducted by BLM regarding the wilderness values of the area; and photographic documentation.

Managers should review any such information and documentation submitted as soon as practicable, and shall field check the information as appropriate. After such review and field checking, the BLM should make a preliminary determination whether the conclusion reached in previous BLM inventories that the area in question lacked wilderness characteristics remains valid, or whether instead there is a reasonable probability that the area in question (or a significant portion thereof) may have wilderness characteristics.

If BLM determines that the conclusion reached in previous BLM inventories remains valid, it should notify the person(s) submitting that information of that fact, but should retain the information and documentation and evidence of BLM's consideration.

If the BLM determines that the area in question (or a significant portion thereof) may have wilderness characteristics, and if actions are proposed that could degrade the wilderness values or the roadless character so as to disqualify the area from further consideration as a WSA, as discussed in paragraph .06F, below, the BLM should, as soon as practicable, initiate a new land use plan or plan amendment to address the wilderness values.

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F. Evaluation of Actions Proposed in Areas that May Have Wilderness Characteristics.

When an action is proposed in an area that BLM determines may have wilderness characteristics, BLM should follow the process outlined below:

The BLM manager should first determine if the proposed action is consistent with the land use plan in effect for that area. If it is not, then consideration cannot proceed without a new land use plan or plan amendment.

If it is consistent with the land use plan, the BLM manager should prepare a NEPA document for the proposed action. That NEPA document should consider available new information on wilderness characteristics as discussed in .06E.

If the BLM determines that impacts from a proposed action could degrade the wilderness values or the roadless character so as to disqualify the area from further consideration as a WSA, the BLM must consider in the NEPA document an alternative of mitigating or relocating the proposed action to avoid or minimize impacts on wilderness values; and must also consider the alternative of postponing a decision on the proposed action until the wilderness values can be addressed through a new land use plan or plan amendment.

Where the NEPA analysis shows that a proposed action would not disqualify the area from further consideration as a WSA, BLM may approve the action, if consistent with other applicable requirements of law and other resource management considerations.

Where the NEPA analysis shows that a proposed action would disqualify the area from further consideration as a WSA, BLM should, subject to valid existing rights, postpone the action until wilderness values can be addressed through a new land use plan or plan amendment, which process should be expedited and completed as soon as possible.

G. WSA Management. Public lands designated as a WSA through a land use plan shall be managed under the Interim Management Policy for Lands Under Wilderness Review (IMP), Handbook H8550-1, so as not to impair their suitability for wilderness designation. All WSAs will remain under the IMP until wilderness legislation is enacted by the Congress designating the area as wilderness or releasing it for other purposes, or the plan establishing the WSA is amended to modify or eliminate the WSA designation.

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H. Protesting Decisions. WSA recommendations made through the planning process are protestable to the BLM Director under the provisions of 43 CFR 1610.5-2. Protest decisions by the Director are the final decision of the Department of the Interior.

.07 Special Provisions Applicable to Alaska. Pending further policy guidance from the Secretary of the Interior, BLM will not conduct wilderness inventories in Alaska under the provisions of Sections 201 and 202 of the FLPMA.

.08 Historic Background

A. Section 603 of the FLPMA required the Secretary of the Interior to review all areas of the public lands and determine which contain wilderness characteristics and report to the President, Interior's recommendations for proposed new units of the National Wilderness Preservation System (NWPS) by October 21, 1991. Passage of this act also authorized BLM lands to become components of the NWPS for the first time, making wilderness preservation part of BLM's multiple-use mandate. Section 603 of the FLPMA also provided the original mandate for BLM to conduct wilderness reviews. Since all wilderness review mandates of Section 603 have been completed, except for Alaska, this section of the FLPMA no longer provides pertinent direction for our present recurring land-use planning wilderness inventories.

B. Present direction for inventories is provided by FLPMA in Sections 102 (a) (2) & (8), 201 (a), and 202 (c)(4) & (9) and land-use planning in Sections 202 (a), (b), (c), and 205 (b). These sections direct BLM to "preserve and protect certain public lands in their natural condition" and to "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern." These Sections also direct the Bureau to utilize inventory information in the development of land-use plans and coordinate public land inventories and planning efforts with other Federal, State, and local agencies and Indian tribes.

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.1 Wilderness Inventory Procedures

.11 Introduction. This chapter contains the procedural guidance for conducting wilderness inventories of BLM administered lands.

A. Starting the Inventory. The primary function of a wilderness inventory is to document the presence or absence of public lands with wilderness character. The inventory will include gathering information and preparing a file for each inventory area.

B. Public Involvement. Public involvement may be appropriate, under certain circumstances, in conducting a wilderness inventory.

C. Previous Studies. Wilderness Study Areas (WSAs) that were previously studied under Section 603 or Section 202 of FLPMA where recommendations are pending before Congress cannot be reinventoried until such time as the Congress acts on those recommendations.

.12 The Wilderness Inventory Process. The wilderness inventory is the process of determining the presence of roadless areas with wilderness character. Inventory areas found to possess the requisite wilderness values will be further evaluated through the land use planning process to determine if they should be designated as WSAs.

A. Identify Inventory Areas. Identify inventory areas from the categories of lands described earlier in this handbook in Section .06 B-D.

1. Identification of the specific area to be inventoried will require combining existing land status and available road inventory data. The resulting inventory area will be bounded by either a road, right-of-way, non-public lands, and/or areas containing land parcels withdrawn or otherwise not subject to wilderness inventory/planning. An inventory area may be larger than the actual acquired lands because of the need to look at any contiguous roadless federal lands.

2. Each inventory area should be named or numbered for reference. A numbering sequence should not duplicate any used in previous wilderness inventories or studies.

3. A permanent documentation file should be initiated for each area to be inventoried. Appendix A provides details on the appropriate contents of this file.

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B. Initiate the Inventory. Develop appropriate public notification of the intent to initiate a wilderness inventory.

C. Prepare the Inventory Area Evaluation.

1. Complete the Inventory Area Evaluation form (Appendix B), along with a Road/Way Analysis (Appendix C), and a Photo Log (Appendix D) for each inventory area. The sample forms in Appendices B, C, and D should be adequate for most wilderness inventories, but may be modified to meet field office needs.

2. The Wilderness Inventory Evaluation form, Appendix B, will assist BLM personnel in three ways. First, it will describe and document the presence, extent, and quality of wilderness values within an inventory area. Second, it will describe ownership patterns, existing uses, permanent structures, surface disturbances, size, and other features of the area. Third, it will provide an efficient and consistent way to display BLM findings.

3. Color prints or slides and maps should be used to document each inventory area. These should illustrate representative as well as unusual characteristics of the area. Such characteristics may include roads, ways, topographic and vegetative features, recreational attractions, human impacts, development and facilities, supplemental values, and any other natural or unnatural features which are important in evaluating the presence or absence of roads and wilderness values. Photos should be keyed to a large-scale map indicating the date the picture was taken, location of photo points, and the direction the camera was facing using the photo log in Appendix D.

.13 Wilderness Values.

A. Analysis of Roads. It is important to evaluate whether the area being inventoried contains roads. Any roads should be clearly identified and their impact on the naturalness of the area evaluated. If an access route meets the road definition, its use and possible long term need should be described.

1. In order to insure a consistent identification of "roads" as opposed to a vehicle way, the following definition has been adopted:

"The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicle does not constitute a road."

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This language is from the House of Representatives Committee Report 94-1163, page 17, dated May 15, 1976, on what became the FLPMA. It is the only statement regarding the definition of a road in the law or legislative history.

2. The BLM will continue to base the definition of what constitutes a "road" from the FLPMA's legislative history. The BLM previously adopted and will continue to use the following sub-definitions of certain words and phrases in the BLM road definition stated above:

a. **"Improved and maintained"** - Actions taken physically by people to keep the road open to vehicle traffic. "Improved" does not necessarily mean formal construction. "Maintained" does not necessarily mean annual maintenance.

b. **"Mechanical means"** - Use of hand or power machinery or tools.

c. **"Relatively regular and continuous use"** - Vehicular use which has occurred and will continue to occur on a relatively regular basis. Examples are: access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims.

3. A route which was established or has been maintained solely by the passage of vehicles would not be considered a road, even if it is used on a relatively regular and continuous basis. Vehicle routes constructed by mechanical means but which are no longer being maintained by mechanical methods are not roads. Sole use of hands and feet to move rocks or dirt without the use of tools or machinery does not meet the definition of "mechanical means." Roads need not be "maintained" on a regular basis but rather "maintained" when road conditions warrant actions to keep it in a usable condition. A dead-end (cherry-stem) road can form the boundary of an inventory area, and does not by itself disqualify an area from being considered "roadless".

B. Analysis of Wilderness Character. The inventory will evaluate wilderness characteristics as discussed in Section 2(c) of the Wilderness Act of 1964, and incorporated in the FLPMA, which states:

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"A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value."

1. Size. Determine if the inventory area "... has at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition." Specifically, the size criteria will be satisfied for inventory areas in the following situations and circumstances:

a. Roadless areas with over 5,000 acres of contiguous public lands. State or private lands are not included in making this acreage determination.

b. Any roadless island of the public lands of less than 5,000 acres.

c. Roadless areas of less than 5,000 acres of contiguous public lands where any one of the following apply:

(1) They are contiguous with lands which have been formally determined to have wilderness or potential wilderness values, or

(2) It is demonstrated that the area is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired conditions, and of a size suitable for wilderness management, or

(3) They are contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more.

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2. Naturalness.

a. Affected Primarily by the Forces of Nature. Determine if the area "... generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable."

(1) To do that, it must be possible to observe the area as being generally natural. It must appear to have been affected primarily by the forces of nature, and people's work must be substantially unnoticeable. It must retain its "primeval character." It should be an area where the earth and its community of life are untrammelled by humans and their activities. Trammel means anything that impedes or hinders free action.

(2) An area may include some human impacts provided they are substantially unnoticeable in the area as a whole. Examples of man-made features that may be substantially unnoticeable in certain cases are: trails, trail signs, bridges, fire towers, fire breaks, fire suppression facilities, pit toilets, fisheries enhancement facilities (such as fish traps and stream barriers), fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, research monitoring markers and devices, wildlife enhancement facilities, radio repeater sites, air quality monitoring devices, fencing, spring developments, and small reservoirs.

b. Describing Human Impacts. Human impacts within the review area must be described. Only significant impacts that influence the determination of the area's naturalness should be documented. If several minor impacts exist, summarize their cumulative effect on the area's degree of naturalness.

(1) There is an important difference between an area's natural integrity and its apparent naturalness. Natural integrity refers to the presence or absence of ecosystems that are relatively unaffected by human's activities. Apparent naturalness refers to whether or not an area looks natural to the average visitor who is not familiar with the biological composition of natural ecosystems versus human-affected ecosystems in a given area. The presence or absence of naturalness (i.e., do the works of humans appear to be substantially unnoticeable to the average visitor?) is the question the Wilderness Act directs the review to assess.

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(2) Caution should be used in assessing the effect on naturalness that relatively minor human impacts create. Some human works are acceptable in designated wilderness; similar impacts in a inventory area should not result in a conclusion that the area lacks naturalness. An overly pure approach to assessing naturalness must be avoided.

c. Outside Human Impacts. Human impacts outside the inventory area will not normally be considered in assessing naturalness of a area. However, if an outside impact of major significance exists, it should be noted in the overall inventory area description and evaluated for its direct affects on the inventory area. Human impacts outside the area should not automatically lead to a conclusion that a inventory area lacks wilderness characteristics.

3. Solitude or a Primitive and Unconfined Type of Recreation. Determine if the area "... has outstanding opportunities for solitude or a primitive and unconfined type of recreation . . ." The word "or" in this sentence means that an area only has to possess one or the other. It does not have to possess outstanding opportunities for both elements, does not need to have outstanding opportunities on every acre. There must be outstanding opportunities somewhere in the area. When Inventory areas are contiguous to WSAs, evaluation of outstanding opportunities should consider and document whether Inventory areas have outstanding opportunities either on their own, or in combination with adjacent WSAs.

a. Outstanding Opportunities. The Wilderness Act does not specify what was intended by "solitude or a primitive and unconfined type of recreation." In most cases, the two opportunities could be expected to go hand-in-hand. However, the outstanding opportunity for solitude may be present in an area offering only limited primitive recreation potential. Also, an area may be so attractive for recreation use that it would be difficult to maintain opportunity for solitude; e.g. around water:

b. Each inventory area must be assessed on its own merits or in combination with an adjacent wilderness area or WSA as to whether an outstanding opportunity exists. There must be no comparison among areas. It is not permissible to use any type of rating system or scale, whether numerical, alphabetical, or qualitative (i.e., high-medium-low), in making the assessment. Good judgment must be used in determining that outstanding opportunities either do or do not exist in each area.

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(1) Dictionaries define "solitude," "outstanding," and "opportunity," as follows:

(a) Solitude: The state of being alone or remote from others; isolation. A lonely or secluded place.

(b) Outstanding: Standing out among others of its kind, conspicuous; prominent. Superior to others of its kind; distinguished; excellent.

(c) Opportunity: A situation or condition favorable for attainment of a goal.

(2) BLM defines "primitive and unconfined recreation" as nonmotorized, non-mechanical (except as provided by law), and undeveloped types of recreation activities.

c. Evaluating Qualities. Using these definitions, specific procedures for evaluating these qualities are outlined below.

(1) Solitude

(a) Determine whether or not the area has outstanding opportunities for solitude. In making this determination, consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory area, rather than to evaluate opportunity for solitude in comparison to human habitation.

(b) Do not assume that simply because an area or portion of an area is flat and/or unvegetated, it automatically lacks an outstanding opportunity for solitude. Similarly, do not conclude that simply because an area is relatively small, it does not have an outstanding opportunity for solitude. Consideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude.

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(c) Factors or elements influencing solitude may include size, natural screening, and ability of the user to find a secluded spot. It is the combination of these and similar elements upon which an overall solitude determination will be made. It may be difficult, for example, to avoid the sights and sounds of people in some areas unless it is relatively large. A small area, however, may provide opportunities for solitude if, due to topography or vegetation, visitors can screen themselves from one another.

(2) Primitive and Unconfined Recreation.

(a) Determine whether or not the area offers an outstanding opportunity for a primitive and unconfined type of recreation. In making this determination, consider those activities that provide dispersed, undeveloped recreation which do not require facilities or motorized equipment.

(b) Some examples of primitive and unconfined types of recreation are: hiking, backpacking, fishing, hunting, spelunking, horseback riding, mountain or rock climbing, river running, cross-country skiing, snowshoeing, dog sledding, photography, bird watching, canoeing, kayaking, sailing, and sight seeing for botanical, zoological, or geological features, or other activities permitted in wilderness.

(c) An area may possess outstanding opportunities for a primitive and unconfined type of recreation either through the diversity in the number of primitive and unconfined recreational activities possible in the inventory area or the outstanding quality of one opportunity. Other factors to consider:

(i) Present visitor use of an area is not necessary in evaluating this criterion. The factor to be determined is whether an outstanding opportunity is present, regardless of present amount of use.

(ii) The absence of a trail system or convenient access is not a valid basis for concluding that an outstanding opportunity for primitive and unconfined recreation does not exist.

(iii) The absence of water in an area is not a valid basis for concluding that an outstanding primitive recreation opportunity does not exist.

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(iv) "Challenge" and "risk" are appropriate for consideration under this criterion. However, their presence is not necessary in order to conclude that an area does qualify under this criterion.

4. Supplemental Values.

a. Determine if the inventory area contains "... ecological, geological, or other features of scientific, educational, scenic, or historical value." The Wilderness Act states a wilderness "may also contain" these values. Supplemental values are not required for wilderness but their presence should be documented where they exist.

b. A finding that an area being inventoried lacks any or all of the supplemental values should not affect the determination of the existence of wilderness character.

C. Boundary Adjustments. Where substantially noticeable human caused impacts occur within an inventory area, reviewers should consider the opportunity to adjust the area boundary to exclude the human impacts. Minor human impacts normally will not require a boundary adjustment, but where there are several minor impacts, they should be evaluated as to their cumulative effect on the apparent naturalness of all or part of the area. Boundary adjustments should be made to identify the parts of the area that appear natural and parts that do not. When boundary adjustments are made, a decision must be made on whether the remaining portion of the area is of sufficient size to find that it has wilderness characteristics.

1. When multiple human impacts are considered to be substantially noticeable, caution must be used in relocating the boundary to define the part of the area found to have wilderness character. Natural portions of a area located between the individual human imprints should not be automatically excluded.

2. When the boundary of the area found to have wilderness character is adjusted due to human impacts, the boundary should, where possible, be located on the physical edge of the "imprint of man". In this case, the boundary must eliminate the "imprint of man" and as little adjacent land as necessary. The adjusted boundary must not be drawn on a "zone of influence" around the imprint for these reasons: (1) consistency between inventory teams in locating this "zone of influence" would be difficult to achieve, and (2) future impacts would in effect be able to encroach on a area creating a new "zone of influence."

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3. Developed rights-of-way (ROW) are treated like other significant impacts. When a transmission line or other developed ROW is located within a area and the decision is made to eliminate its impact on naturalness from the remainder of the area, the boundary should be drawn on the edge of the ROW.

4. As a general rule, the boundary of a area is to be determined based on evaluation of the human impacts within the area. It should not be further constricted on the basis of opportunity for solitude or primitive and unconfined recreation. An area can have wilderness character even though every acre within the area does not meet the outstanding opportunity criterion. In unusual cases it may be appropriate to consider adjusting the boundary based on the outstanding opportunity criterion; for example:

a. When a narrow finger of roadless land extends outside the bulk of the area;

b. When land without wilderness characteristics penetrates the area in such a manner as to create narrow fingers of the area (e.g., cherry stem roads closely paralleling each other);

c. When extensive private inholdings create a very congested and narrow boundary area.

These situations are expected to rarely occur. Good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Boundary adjustments would not be necessary if the land in question possesses an outstanding opportunity for primitive and unconfined recreation.

D. Possibility of the Area Returning to a Natural Condition. An inventory area or portion of an inventory area in which human imprints are substantially noticeable, but which otherwise contains wilderness characteristics, may be further considered for designation as a WSA when it is reasonable to expect that human imprints will return or can be returned to a substantially unnoticeable level either by natural processes or by hand labor.

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.14 Completion of the Inventory Process. An inventory area found to possess the requisite wilderness characteristics as defined by the Wilderness Act of 1964 will be further evaluated through the land use planning process to determine if it should be designated as a WSA. Any portion of an inventoried area found to be roaded, unnatural, or lacking wilderness character will not be studied further.

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.2 Wilderness Study Procedures

21 Introduction Inventory areas will be evaluated through the land use planning process, using regulations at 43 CFR 1600, and the BLM 1600 Manual and Handbook series, to analyze the values, resources, and uses within the area. The planning process will be used to determine whether these areas should be designated as WSAs to be managed under the IMP, BLM Handbook 8550-1. Inventory areas studied under the authority of Section 202 of the FLPMA, and not designated as WSAs, will be managed as determined in the plan.

22 Wilderness Study Process The wilderness study must evaluate wilderness values, the ability to manage the area as a WSA, and other resource values and uses. These elements are then used to determine the most appropriate land use allocations for the affected public lands.

A. Evaluation of Wilderness Values Consider the extent to which the quality of an area's mandatory and optional wilderness characteristics contribute to the overall value of an area for wilderness purposes. Section 4(b) of the Wilderness Act of 1964 recognized the broad scope of values to be considered in describing wilderness by stating: "... wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." The inventory process determined the areas which contain wilderness characteristics. The process described below will aid in determining and documenting the quality of these characteristics, and the degree to which these characteristics are present in each area. These components must be evaluated in determining an area's value as a WSA.

1. Quality of the Area's Mandatory Wilderness Characteristics This section of the handbook defines each of the wilderness characteristics and outlines the key elements which must be addressed in evaluating the area's wilderness values. In the Wilderness Act of 1964, the Congress defines wilderness and directs that each wilderness area be managed to preserve its wilderness character. Under the definition in Section 2(c) of the Wilderness Act, certain wilderness characteristics are mandatory, while others are optional. The mandatory

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wilderness characteristics (size, naturalness, and outstanding opportunities for solitude or a primitive and unconfined type of recreation) are the factors used in the wilderness inventory to determine which roadless areas have wilderness character. These characteristics may be present in varying degrees. In each wilderness study, objective information will be gathered to enable judgment on the extent to which the quality of the area's mandatory wilderness characteristics contributes to its suitability for designation as a WSA. This section defines each of these. These elements must be documented and summarized as outlined below.

a. Naturalness.

(1) "Naturalness" refers to the requirement in Section 2(c) of the Wilderness Act that a wilderness area "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." The language in the Act makes clear that areas may be designated as wilderness which "generally appear" natural and which may contain some imprints of human use, so long as those imprints are "substantially unnoticeable." There are areas which have minor human imprints within their boundaries which are substantially unnoticeable in the study area. While these imprints may not have been sufficient to eliminate an area from further wilderness consideration, they must be further evaluated during the study process to determine the extent to which their presence affects the quality of overall naturalness of the area. Impacts on the overall naturalness of the study area should be assessed.

(2) Human imprints present in a study area should be evaluated both individually and on a cumulative basis. Such imprints should be summarized and documented according to each of the following:

- (a) General description of the imprints;
- (b) Location and size of the areas subject to imprints;

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- (c) Potential for separating imprinted portions from the rest of the area and recommending the remainder for WSA designation; (This may be considered through the development of partial WSA alternatives.); and,
- (d) The overall influence of human imprints on the naturalness of the area.

b. Outstanding Opportunities for Solitude or Primitive and Unconfined Recreation. Section 2(c) of the Wilderness Act states that a wilderness area must have "... outstanding opportunities for solitude or a primitive and unconfined type of recreation." The word "or" in this sentence means that it does not have to possess outstanding opportunities for both solitude and primitive recreation; it only has to possess one or the other. The inventory determined those areas which contain outstanding opportunities for either solitude or primitive and unconfined recreation and those areas which exhibit both characteristics. Evaluation of the outstanding characteristics should consider adjacent lands that have identified wilderness characteristics such as WSAs and wilderness areas. Generally the outstanding opportunities criteria should not be the primary factor used to determine if an area should or should not be designated as a WSA. The process described below will aid in determining and documenting the degree to which these characteristics are present in each area.

(1) Solitude. There are certain intrinsic features of an area which can be assessed objectively with respect to an area's outstanding opportunities for solitude. The features of the area to be considered in evaluating its outstanding opportunities for solitude are:

- (a) Size and configuration;
- (b) Topographic screening;
- (c) Vegetative screening;
- (d) Ability of user to find a secluded spot; and
- (e) Presence of outside sights and sounds.

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During the wilderness study, sights and sounds of human activities and works outside the boundaries of the Inventory area may be documented when assessing the quality of an area's opportunities for solitude or primitive recreation. Congressional guidance on this issue in House and Senate reports on the Endangered American Wilderness Act of 1978 has cautioned Federal agencies on the consideration of outside sights and sounds in wilderness studies. For example, in the case of the Sandia Mountain Wilderness in New Mexico, the House Report (No. 95-540), stated:

"The "sights and sounds" of nearby Albuquerque, formerly considered a bar to wilderness designation by the Forest Service, should, on the contrary, heighten the public's awareness and appreciation of the area's outstanding wilderness values."

(2) Primitive and Unconfined Recreation. "A primitive and unconfined type of recreation" refers to those activities that provide dispersed, undeveloped recreation which do not require facilities or motorized equipment. Areas determined in the inventory to possess outstanding opportunities for this type of recreation contain either a diversity of possible activities or one activity of outstanding quality. The evaluation of this characteristic should be based on an analysis of the intrinsic features of the area which make a primitive recreation experience possible, and on the quality and diversity of the area's specific primitive recreation opportunities.

2. Quality of the Area's Optional Wilderness Characteristics (Supplemental Values). Section 2(c) of the Wilderness Act states that a wilderness area "... may also contain ecological, geological, or other features of scientific, educational, scenic or historical value." These optional wilderness characteristics are considered "supplemental" during a wilderness inventory, because the Wilderness Act does not require them. During wilderness studies, these features are not mandatory for an area to be designated as a WSA. However, as part of the wilderness study process, these characteristics should be thoroughly considered when assessing an area's overall value as a WSA. For example, the presence of special wildlife values or a special geological feature may provide additional reasons for recommending an area as a WSA. Consider if the protection afforded a WSA would provide additional protection of these special features.

B. Evaluation of Manageability. The Inventory area must be capable of being effectively managed as a WSA to preserve its wilderness character.

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1. General. The area must be capable of being managed to preserve its wilderness character; both to maintain the quality of its wilderness characteristics and to ensure continuation of its uses and multiple resource benefits. Evaluate the following factors to insure that those areas recommended for WSA designation can be managed in a manner which enables the *entire* area to retain its present wilderness character:

a. The provisions of BLM's IMP handbook must be considered to determine if the area can be managed as a WSA. The Handbook describes in detail how the BLM will manage public lands designated as WSAs.

b. Consider the basic thrust of interim wilderness management appropriate to the Inventory area in view of the expected uses and activities in the area. For instance, part of the area might be managed with emphasis on protecting undisturbed wildlife habitat, while another part might be managed with emphasis on primitive camping use. Attention should be given to means for protecting wilderness characteristics (including supplemental values) and for dealing with specific management problems anticipated as a result of other uses within the area or other conflicting uses outside of the area. The phrase "effectively managed" means that an area can be managed to maintain the wilderness characteristics that qualified the areas as inventory areas.

c. BLM must be reasonably certain that the inventory area could be managed as a WSA over the long run, based on present knowledge of the resources, on-going uses, and private rights in the area. If the allowed uses, including the exercise of valid existing rights, are expected to cause a substantially noticeable impact even after any reclamation is applied, then the BLM should reasonably conclude that the affected portion cannot be managed as a WSA.

2. Land Status. Document the land status of the inventory area. Subsurface rights in an inventory area may be owned by a party other than the Federal Government, thus limiting BLM's ability to preserve wilderness character on the surface.

3. Access to State or Private Inholdings. In addressing manageability, assess the potential impact of providing access to non-Federal inholdings subject to valid existing rights.

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4. Use of Buffer Zones. The fact that non-wilderness activities or uses can be seen or heard from areas within the inventory area shall not be considered when analyzing an area's manageability as a WSA.

C. Other Resource Values and Uses. Consider both the extent to which other resource values and uses of the area would be forgone or adversely affected as well as the benefits that may accrue to other multiple resource values and uses as a result of designating the area as a WSA. Any Environmental Impact Statement on a plan considering the establishment of WSAs should identify a range of alternatives allocating combinations of all or part or none of the inventory area(s) as a WSA. If the preferred alternative proposed in the plan recommends the area as a WSA, the BLM should identify the probable effects, both positive and negative, on other resource values and uses present in the area which could result from the area being managed as a WSA.

A WSA recommendation must reflect a thorough consideration of any identified or potential energy and mineral resource values present in the area. The other resource values and uses to be addressed in this regard include timber, rights-of-way, water developments, rangeland, range improvements, recreation, wildlife, and all other forms of resource use practiced on the public lands. The extent to which a WSA designation may cause adverse impacts on a particular resource use will vary from area to area, depending on a number of factors, including:

- (1) The degree to which the other resource or use is present in the area;
- (2) The potential for further development of the other resource in the area;
- (3) The degree to which the other resource or use is present on other public and private lands *outside* the study area;
- (4) Local or regional economic dependence on the resource in the area; and
- (5) The degree to which use or development of the resource is compatible with or conflicts with management of the area as a WSA.

In contrast to any adverse impacts on other resource uses, the extent to which WSA designation may cause multiple resource benefits should also be documented. The report of the House Interior and Insular Affairs Committee on FLPMA (House Report 94-1163) states:

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"Emphasis should be on multiple natural values of roadless areas as part of an overall multiple use framework for a general area rather than primarily recreational uses. In addition to the public recreational use values, interim protection of the area as a WSA and possible future designation as wilderness should augment multiple use management of adjacent or nearby lands in protecting watershed and water yield, wildlife habitat preservation, preserving natural plant communities and similar natural values."

The same emphasis on multiple resource values of wilderness appeared in the Endangered American Wilderness Act of 1978, which explicitly recognized watershed preservation and wildlife habitat protection as objectives. The Act states in general that in addition to its value as a setting for primitive recreation or solitude, wilderness can also provide a range of benefits to other multiple resource values and uses which are of significance to the American people. These multiple resource benefits may include protection of watersheds, water yield, and water quality; protection of wildlife habitat; preservation of natural plant communities; preservation of cultural and archaeological resources; and protection of scenic quality and other natural values.

The extent to which the Inventory area under study can provide such benefits will contribute to its value as a WSA. The following are the primary categories of resource uses (other than wilderness values) which could benefit from WSA designation. These should be addressed in terms of both on-site benefits (those occurring within the study area) and off-site benefits (those occurring outside the study area) which could be ensured through WSA designation:

- (1) Multiple resource values and uses which already exist in the area whose continued viability could be better ensured through the protective status of WSA designation, such as wildlife habitat and archeological sites.

- (2) Multiple resource values and uses which do not exist in the area now, but which could occur in the future as a result of the protective status of a WSA designation and natural ecological processes being allowed to function unimpeded. Examples include the return of wildlife and fish species formerly found in the area, or an improvement in water quality as a result of WSA protection.

- (3) Specific benefits likely to accrue to off-site areas not within the boundaries of the study area. Consider such benefits as protection of watersheds, water yield and water quality; and preservation of visual resources within the area as seen from outside the study area boundary.

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.23 The Decision Making Process.

A. Integrating Wilderness Information into the Planning Process. Section .22, above, provides guidance on evaluating the quality and extent of an area's wilderness values, determining the ability of an area to be managed as a WSA, and on considering the other resource values and uses present in the area. This information should be used in the land use planning process to make the appropriate land use allocations. The information should be integrated into the planning process to document the rationale for the WSA recommendations, to insure that wilderness values are being adequately addressed in an environmental analysis, and to address impacts on other resource values and uses if an area is designated as a WSA. The information should also be used in the environmental analysis to address impacts on wilderness and other multiple resource values if a inventory area or part of an inventory area is not designated as a WSA.

B. WSA Boundaries. The WSA boundaries are determined after evaluating all the wilderness characteristics, supplemental values, other resource uses and benefits, and manageability of the area under study. Appendix E provides guidance on how to delineate WSA boundaries. Where appropriate, the planning document should identify inholdings that should be acquired. In addition the plan should identify the inholdings to be designated as part of the WSA when acquisitions are completed.

C. Final Plan and Environmental Analysis. Final land use plans are approved by the State Director. Areas designated as WSAs in the Record of Decision on the plan become WSAs managed under the IMP until such time as the Congress makes a decision on these areas or the management plan is amended to modify or remove the WSA designation. There is no requirement to send wilderness designation recommendations forward to the Congress for WSAs established under the provisions of the Handbook.

D. Final WSA Map. A WSA map representing the planning decision must be prepared and included in the WSA permanent documentation file for each WSA designated through the planning process. Appendix E provides guidance on preparation of WSA maps.

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Glossary of Terms

Terms used in this handbook are defined as follows:

-A-

areas of critical environmental concern (ACEC): areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.

-C-

contiguous: lands or legal subdivisions having a common boundary; lands having only a common corner are not contiguous.

-L-

land use plan: a set of decisions that establish management direction for land within an administrative area, as prescribed under the planning provisions of the FLPMA. They are an assimilation of land use plan level decisions developed through the planning process at 43 CFR 1600, regardless of the scale at which the decisions were developed

-N-

National Landscape Conservation System: A system of Congressional, Presidential, or other designated areas managed by the BLM, the components of which include National Monuments, National Conservation Areas, Wilderness Areas, Wilderness Study Areas, Wild and Scenic Rivers, National Historic Trails, National Scenic Trails, the California Desert Conservation Area, and the Headwaters Forest Reserve.

-O-

outstanding: 1. Standing out among others of its kind; conspicuous; prominent; 2. superior to others of its kind; distinguished; excellent.

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-P-

primitive and unconfined recreation: non-motorized, non-mechanized (except as provided by law), and undeveloped types of recreational activities. Bicycles are considered mechanical transport.

public lands: any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except:

- lands located on the Outer Continental Shelf;
- lands held in trust for the benefit of Indians, Aleuts, and Eskimos; and
- lands where the United States retains the mineral estate but the surface is private.

-R-

roadless: refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

-S-

solitude: 1. the state of being alone or remote from others; isolation; 2. a lonely or secluded place.

-W-

wilderness: the definition contained in Section 2(c) of the Wilderness Act of 1964 (78 Stat. 891).

Wilderness Study Area (WSA): a designation made through the land use planning process of a roadless area found to have wilderness characteristics as described in Section 2(c) of the Wilderness Act of 1964.

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APPENDIX A

PERMANENT DOCUMENTATION FILE

The file should include the following:

1. **Inventory Area Evaluation:** (Appendix B).
2. **Road Inventory:** Copy of reference to road inventory or copy of Road / Way Analysis. (Appendix C).
3. **Photo Log.** (Appendix D).
4. **Photographs.**
5. **Inventory Maps.** Maps used in conducting and documenting findings of wilderness inventories. Maps depict the inventory area name, number, boundary, photo points, and areas having wilderness characteristics. USGS 7.5 minute series topographic base maps are recommended.
6. **Miscellaneous.** Include additional notes, forms, maps, documents.
7. **Final WSA Map.** Include a WSA map prepared on 7.5 minute series USGS base maps. This map will represent the WSA boundary as established through the planning process. Appendix E provides additional guidance on preparation of this map.

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APPENDIX B

INVENTORY AREA EVALUATION

NAME & NO. _____

- I. DESCRIPTION: (Include acreage, land ownership, location, topography, vegetation and summary of major human uses/activities)

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INVENTORY AREA EVALUATION (cont.)

NAME & NO. _____

II. WILDERNESS CHARACTER ANALYSIS:

Analyze in a concise narrative the following essential wilderness characteristics.

A. SIZE

Approximate Acres:

Inventory area _____

Subunit(s) _____

TOTAL _____

Contiguous WSA (or other lands with wilderness character) _____

Narrative:

Summary: 1. Does the area have at least 5,000 acres of contiguous land or is it of sufficient size to make practicable its preservation and use in an unimpaired condition?

YES___ NO___

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INVENTORY AREA EVALUATION (cont.)

NAME & NO. _____

B. NATURALNESS

Narrative:

Summary: Does the area generally appear to have been affected primarily by the forces of nature, with the imprint of people's work substantially unnoticeable?

YES___ NO___

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INVENTORY AREA EVALUATION (cont.)

NAME & NO. _____

C. OUTSTANDING OPPORTUNITY FOR SOLITUDE OR PRIMITIVE AND UNCONFINED RECREATION

1. SOLITUDE

Narrative:

Summary: Does the area have outstanding opportunities for solitude?

YES___ NO___

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INVENTORY AREA EVALUATION (cont.)

NAME & NO. _____

2. PRIMITIVE AND UNCONFINED RECREATION

Narrative:

Summary: Does the area have outstanding opportunities for a primitive and unconfined type of recreation?

YES___ NO___

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INVENTORY AREA EVALUATION (cont.)

NAME & NO. _____

D. SUPPLEMENTAL VALUES

Narrative:

Summary: Does the area contain ecological, geological, or other features of scientific, educational, scenic, or historical value?

YES___ NO___

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INVENTORY AREA EVALUATION (cont.)

NAME & NO. _____

III. SUMMARY:

Results of wilderness character analysis:

1. Does the area meet any of the size requirements? _____yes ___no
2. Does the area appear to be natural? _____yes ___no
3. Does the area offer outstanding opportunities for solitude or a primitive and unconfined type of recreation? _____yes ___no
4. Does the area have supplemental values? _____yes ___no

IV. CONCLUSION:

Check one:

- ___ The area or a portion of the area has wilderness character.
- ___ The area does not have wilderness character.

V. PREPARED BY:

Title: _____ Date: _____

VI. APPROVED BY:

Title: _____ Date: _____

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APPENDIX C

ROAD / WAY ANALYSIS

Inventory area: _____ ROAD ____ WAY ____

Name _____ No. _____

EVALUATOR(s): _____ DATE: _____

I. LOCATION: TOPO QUAD NAME: _____ LENGTH: _____
(Miles)

T. R. SEC(s)

II. FUNCTION:

Arterial ____ Connector ____ Stub/spur ____ Other ____

Comments: _____

III. CONSTRUCTION / IMPROVEMENTS: Yes ____ No ____

Bladed ____ Graveled ____ Culverts ____ Surfaced ____ Other ____

Comments: _____

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ROAD / WAY ANALYSIS (Cont.)

IV. MAINTENANCE: Yes_____No_____

_____Hand tools_____ Machine_____

Comments:_____

V. PURPOSE: Stock tank_____ Spring_____ Reservoir_____ Ranch_____ Farm_____

House_____ Mining_____ Hunting_____ Camping_____ Fence_____ Telephone_____

Transmission line_____ Other_____

Comments:_____

VII. EVIDENCE OF USE: Vehicles_____ Vehicle Tracks_____ Other_____

Comments:_____

VIII. REGULAR AND CONTINUOUS USE: Yes_____ No_____

Comments:_____

IX. CONCLUSION ROAD_____ WAY _____

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Appendix D

PHOTO LOG

Photographer(s) _____ Inventory area Name & No. _____
Roll No: _____

Date Section	Frame No.	Camera Direction	Description	GPS/UTM			
				Location	Township	Range	
	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						

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PHOTO LOG (Cont.)

Date Section	Frame No.	Camera Direction	Description	GPS/UTM Location	Township	Range	
	18						
	19						
	20						
	21						
	22						
	23						
	24						
	25						
	26						
	27						
	28						
	29						
	30						
	31						
	32						
	33						
	34						
	35						
	36						

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APPENDIX E

WSA BOUNDARY DELINEATION GUIDELINES AND MAP STANDARDS

A. Boundary Selection

In addition to considering the maximum protection of ecosystems, it is helpful to delineate boundaries by methods that make possible easy identification on the ground. In cases where it is necessary to mark the boundary for enforcement purposes -- it will be clearer to the public and save money if done on the basis of physical features.

The WSA boundary should be located by using one or more of the following features, listed in descending order of desirability:

1. Semi-permanent manmade features which can be located on the ground and on the map. Examples are: roads; power lines; pipelines.
2. Surveyed or legally determined lines. Examples are: township and section lines; section subdivision lines; already surveyed metes and bounds property lines; boundaries of geopolitical units or other agencies.
3. Natural features which can be located on the ground and on the map. Examples are: sharp, well-defined ridges; mountain peaks; streams; lake shore.
4. Point to point - a straight line from one locatable point to another.
5. Metes and bounds - a series of bearings and distances between locatable points.
6. Utilizing parallels of latitude and meridians of longitude, or plane coordinate systems.

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WSA BOUNDARY DELINEATION GUIDELINES AND MAP STANDARDS (Cont.)

B. Comments on Specific Applications

1. Parallel or setback lines - may be drawn parallel with boundary roads. When setback parallel lines are used, their starting and ending points should be locatable on the ground and on the map.

2. Water boundaries - should be placed on the map with a notation to show intent of location. Only two lines are legally acceptable:

- a. The thread (centerline).
- b. Either bank along the mean high water line.

3. Metes and bounds - segments of boundaries should be limited to those portions which are impossible or difficult to locate by more definite means. This is also true for points or lines located by reference to plane coordinate systems or parallels of latitude and meridians of longitude. When situations occur where a line must be drawn cross-country with no topographic control, try to limit the length of such lines as much as possible and locate both ends of such lines to a locatable point. Advanced survey technology makes these types of boundaries easier and cheaper to locate than in the past, but specialized equipment will be necessary.

C. Map Standards

All inventory areas should be identified on 7.5 minute USGS topographic quadrangle maps as part of a documentation file maintained in the appropriate field office. This map should be prepared as part of the inventory process, and should be the basis for maps developed in the draft environmental impact statement or plan amendment environmental assessment (DEIS/EA). These maps should be available during the public comment period on the draft plan for public inspection upon request. Different boundaries for acreage in other alternatives considered in the DEIS/EA (if any) should also be clearly shown on overlays, or on duplicate maps.

H-6310-1-WILDERNESS INVENTORY AND STUDY PROCEDURES**WSA BOUNDARY DELINEATION GUIDELINES AND MAP STANDARDS (Cont.)**

A final WSA map representing the preferred alternative should be prepared at the same scale as the Inventory area maps as part of the final plan/EIS. Once the plan is final and the record of decision is signed, the WSA map will become part of the permanent documentation file for the affected WSA. (If more than one WSA is covered on the same working map, a cross-reference sheet will be placed in the appropriate files.) Final maps used to show the final WSA boundaries should, as a minimum:

1. Be topographic maps of Base Series 1:24000 (7½ minute quads). Boundary line intent usually cannot be conveyed clearly on less detailed maps.
2. Explain the intent of boundary locations with notations where necessary (such as, "100 feet setback from road centerline").
3. Show proposed boundary line with narrow, black-inked lines. The boundary lines should be fully legible and clearly delineated while not obscuring important topographic information displayed on the base map.
4. Show proposed or designated National Trails, Wild and Scenic Rivers, and other components of the National Landscape Conservation System (if any are within or adjacent to the proposed wilderness).
5. Include the following in the legend:
 - a. Name of Wilderness Study Area
 - b. Date of preparation
 - c. Name of person who prepared map
 - d. Key identifying graphic symbols or colors added to base map, including:
 - i. Proposed boundary
 - ii. Nonfederal ownership (differentiate between split estate, state, private, and other ownership)
6. Be compatible with Bureau standards for digital spatial data and applicable Geographical Information System(s)

APPENDIX F

cc:

Subject: 2001-01-18 Executive Order

on Trails for America in the 21st
Century

Happy Friday to you all! Some good good news! Yesterday, the President signed an Executive Order for Trails- attached below. We- my trails counterparts in NPS, USFS and FHWA had been working on this with DOT for the last few months. Wednesday, we had the rare opportunity to attend the Lewis and Clark Trail event/Monuments announcement event at the Whitehouse- and were thinking that it would have been announced then. When it wasn't, we thought that was the end. Perhaps it's better this way- there were concerns that it could be a point of controversy- when it really shouldn't be. The order is nothing particularly new, but it will give some of the elements of the BLM trails program and interagency efforts along our trails the recognition and support that they need. My hope is that support for trails will continue to grow in the next administration- and that the trails community at large will continue to embrace the notion that our collective strength is through our cooperation on common goals and needs. That has certainly been evidenced through the BLM's development of the National Trails Training Partnership- where now 5 federal agencies and 13 trail organizations- across the spectrum of trail visitors- are joining together under one umbrella to support training efforts both inside and outside government. Please pass on the news and have a great weekend! (I sure will) -Deb

----- Forwarded by Deb Salt/CASO/CA/BLM/DOI on 01/19/01 09:33 AM -----
Laurie Sedlmayr
01/19/01 09:45 AM

Elaine Marquis-Brong/WO/BLM/DOI@BLM, Deb
Salt/CASO/CA/BLM/DOI@BLM

To: Jeff Jarvis/WO/BLM/DOI@BLM,

cc:

Subject: 2001-01-18 Executive Order

on Trails for America in the 21st
Century

FYI

----- Forwarded by Laurie Sedlmayr/WO/BLM/DOI on
01/19/2001 01:00 PM -----
To: Public-Distribution@pub.pub.whitehouse.gov
cc:

Subject: 2001-01-18 Executive Order on Trails for America in the 21st
Century

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 18, 2001

EXECUTIVE ORDER

TRAILS FOR AMERICA IN THE 21st CENTURY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968, as amended (16 U.S.C. 1241-1251), the Transportation Equity Act for the 21st Century (Public Law 105-178), and other pertinent statutes, and to achieve the common goal of better establishing and operating America's national system of trails, it is hereby ordered as follows:

Section 1. Federal Agency Duties. Federal agencies will, to the extent permitted by law and where practicable -- and in cooperation with Tribes, States, local governments, and interested citizen groups -- protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by:

(a) Providing trail opportunities of all types, with minimum adverse impacts and maximum benefits for natural, cultural, and community resources;

(b) Protecting the trail corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails to the degrees necessary to ensure that the values for which each trail was established remain intact;

(c) Coordinating maps and data for the components of the national trails system and Millennium Trails network to ensure that these trails are connected into a national system and that they benefit from appropriate national programs;

(d) Promoting and registering National Recreation Trails, as authorized in the National Trails System Act, by incorporating where possible the commitments and partners active with Millennium Trails;

(e) Participating in a National Trails Day the first Saturday of June each year, coordinating Federal events with the National Trails Day's sponsoring organization, the American Hiking Society;

(f) Familiarizing Federal agencies that are active in tourism and travel with the components of a national system of trails and the Millennium Trails network and including information about them in Federal promotional and outreach programs;

(g) Fostering volunteer programs and opportunities to engage volunteers in all aspects of trail planning, development, maintenance, management, and education as outlined in 16 U.S.C. 1250;

(h) Encouraging participation of qualified youth conservation or service corps, as outlined in 41 U.S.C. 12572 and 42 U.S.C. 12656, to perform construction and maintenance of trails and trail-related projects, as encouraged in sections 1108(g) and 1112(e) of the Transportation Equity Act for the 21st Century, and also in trail planning protection, operations, and education;

(i) Promoting trails for safe transportation and recreation within communities;

(j) Providing and promoting a wide variety of trail opportunities and experiences for people of all ages and abilities;

(k) Providing historical interpretation of trails and trail sites

and enhancing cultural and heritage tourism through special events, artworks, and programs; and

(1) Providing training and information services to provide high-quality information and training opportunities to Federal employees, Tribal, State, and local government agencies, and the other trail partners.

Sec. 2. The Federal Interagency Council on Trails. The Federal Interagency Council on Trails (Council), first established by agreement between the Secretaries of Agriculture and the Interior in 1969, is hereby recognized as a long-standing interagency working group. Its core members represent the Department of the Interior's Bureau of Land Management and National Park Service, the Department of Agriculture's Forest Service, and the Department of Transportation's Federal Highway Administration. Other Federal agencies, such as those representing cultural and heritage interests, are welcome to join this council. Leadership of the Council may rotate among its members as decided among themselves at the start of each fiscal year. The Council's mission is to coordinate information and program decisions, as well as policy recommendations, among all appropriate Federal agencies (in consultation with appropriate nonprofit organizations) to foster the development of America's trails through the following means:

(a) Enhancing federally designated trails of all types (e.g., scenic, historic, recreation, and Millennium) and working to integrate these trails into a fully connected national system;

(b) Coordinating mapping, signs and markers, historical and cultural interpretations, public information, training, and developing plans and recommendations for a national trails registry and database;

(c) Ensuring that trail issues are integrated in Federal agency programs and that technology transfer and education programs are coordinated at the national level; and

(d) Developing a memorandum of understanding among the agencies to encourage long-term interagency coordination and cooperation to further the spirit and intent of the National Trails System Act and related programs.

Sec. 3. Issue Resolution and Handbook for Federal Administrators of the National Trails System. Federal agencies shall together develop a process for resolving interagency issues concerning trails. In addition, reflecting the authorities of the National Trails System Act, participating agencies shall coordinate preparation of (and updates for) an operating handbook for Federal administrators of the National Trails System and others involved in creating a national system of trails. The handbook shall reflect each agencies' governing policies and provide guidance to each agencies' field staff and partners about the roles and responsibilities needed to make each trail in the national system fully operational.

Sec. 4. Observance of Existing Laws. Nothing in this Executive Order shall be construed to override existing laws, including those that protect the lands, waters, wildlife habitats, wilderness areas, and cultural values of this Nation.

Sec. 5. Judicial Review. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity by any party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
January 18, 2001.

#

APPENDIX G

Program Overview

To engage all Americans in marking the new millennium in ways that would leave a lasting legacy, President Clinton and First Lady Hillary Rodham Clinton created the White House Millennium Council to organize a number of national millennium projects. The millennium projects spurred by this effort were guided by the unifying theme to "Honor the Past - Imagine the Future."

Millennium Trails was a partnership between the White House Millennium Council, U.S. Department of Transportation and Rails-to-Trails Conservancy in cooperation with other agencies and organizations. As one of the national millennium projects, Millennium Trails recognized, promoted and supported trails as a means to preserve open spaces, interpret history and culture and enhance recreation and tourism. Under this initiative, more than 2,000 trails across America were be recognized, enhanced or built. These included hiking trails, bicycle paths, greenways and scenic byways through rural and urban landscapes and cultural and heritage trails that preserve and commemorate major events in our nation's history.

Millennium Trails - The Next Phase

January 31, 2001

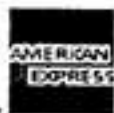
As we enter the year 2001, Millennium Trails continues to move forward. At this time, we want to inform you that the original program services (supported with funding from the United States Department of Transportation and the American Express Company) have been completed. While the mission of the program has been achieved, it is inspiring to see a variety of new efforts continue to grow. We have clearly helped move the trails movement forward and helped make trails an important part of America's legacy in the new millennium. Although current plans do not include a continued central office for Millennium Trails, please note the following initiatives which will continue working towards connecting our heritage, culture and communities:

1. **Presidential Library and Archives:** This website will be maintained online in archival form by the new Clinton Presidential Library, and the Library has been provided with the project archives so they can be included in the permanent collection.
2. **Millennium Trails Book:** In Spring, 2001 a book entitled "Millennium Trails: Pathways for the 21st Century" will be released by Author Kathleen Cordes and Sagamore Press. A portion of the proceeds from the book will support National Trails Day.
3. **Art on Millennium Trails:** The National Endowment of the Arts and the National Assembly of State Arts Agencies continue to advance the NEA funded project to create works of art on each of the Millennium Legacy Trails.
4. **New Interagency Trails Council:** on January 18, 2001, President Clinton signed an Executive Order entitled, "Trails For America In The 21st Century." The order called for the establishment of a Federal Interagency Trails Council and encouraged cooperative efforts to continue creating a national system of trails. Following this action, an M.O.U. was signed by key federal agencies on January 19, 2001 to enhance the management of the National Trails System.
5. **National Recreational Trails Program:** the NRT program has been re-launched by the Department of the Interior and U.S. Forest Service in cooperation with American Trails and other partners. This effort will continue the legacy of Millennium Trails by providing an ongoing program for recognition of local trails at the national level.

On behalf of all of our partners, thank you to everyone who helped make Millennium Trails a

success, and to the countless volunteers and leaders who continue to connect America with trails.

Jeff Olson, Director
Millennium Trails



*Made possible by grants from
American Express Company and
the National Endowment for the Arts.*

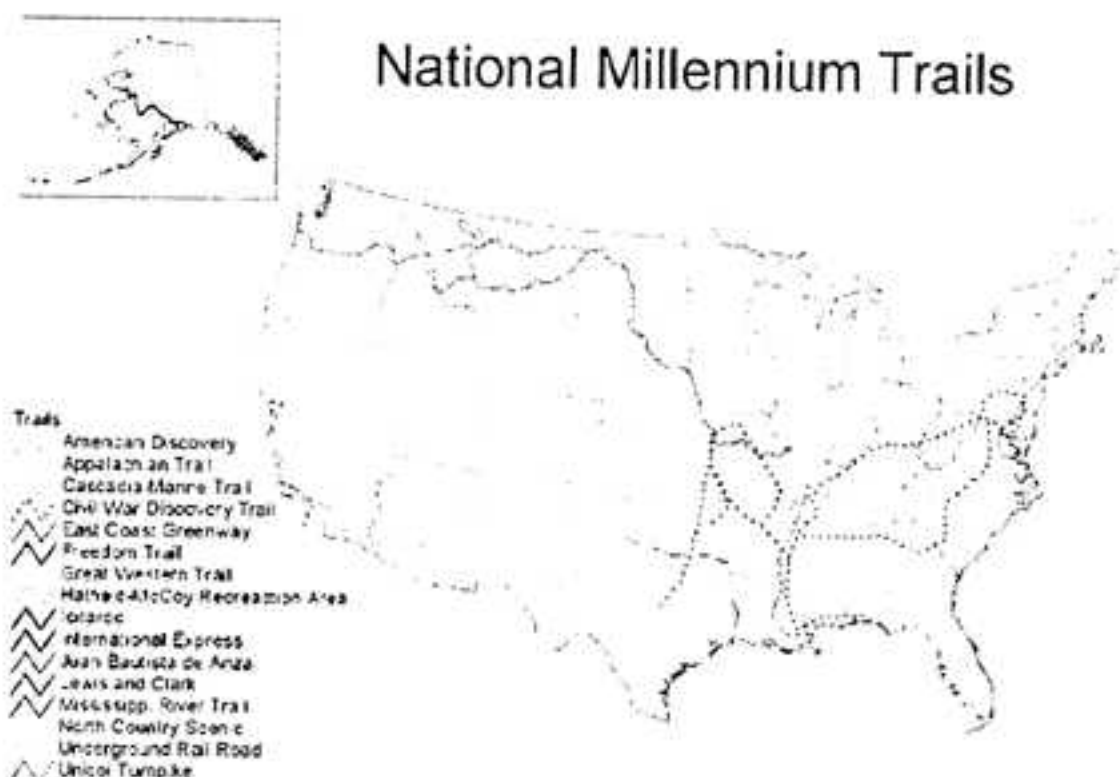
NATIONAL MILLENNIUM TRAILS

Visionary trails which reflect defining aspects of America's history and culture.

As the first phase of Millennium Trails, 16 National Millennium Trails were designated after an objective review of more than 58 nominations from public agencies, trail-managing organizations, and trail volunteer groups. First Lady Hillary Rodham Clinton and U.S. Transportation Secretary Rodney Slater announced the names of the 16 trails on June 26, 1999, during Rails-to-Trails Conservancy's Second International Trails and Greenways Conference.

The 16 National Millennium Trails are visionary trails that reflect defining aspects America's history and culture. These selected trails are a celebration of America's rich history, as well as its bright future in the next millennium. Each of the sixteen National Millennium Trails is a symbol of the great diversity, complexity and grandeur of our entire nation's trails in the 21st century.

In the preface to her announcement of the National Millennium Trails, First Lady Hillary Rodham Clinton noted the importance of these landmark trails. "Through the Millennium Trails project, we are building and maintaining trails that tell the story of our nation's past and will help to create a positive vision for our future. The 16 National Millennium Trails that Secretary Slater designated today are all visionary projects that define us as Americans."



The following is a list of the 16 National Millennium Trails.

The North Country National Scenic Trail

The Unicoi Turnpike

American Discovery Trail

Appalachian National Scenic Trail

Civil War Discovery Trail

Hatfield-McCoy Recreation Area

Iditarod National Historic Trail

The Cascadia Marine Trail

The East Coast Greenway

The Freedom Trail

The Great Western Trail

The International Express

The Juan Bautista de Anza National Historic Trail

The Lewis And Clark National Historic Trail

The Mississippi River Trail

The Underground Railroad



*Made possible by grants from
American Express Company and
the National Endowment for the Arts.*

MILLENNIUM LEGACY TRAILS

Trails which represent the spirit of the nation's states and territories.

The Millennium Legacy Trails were selected from nominations by the Governors of the states and territories because they reflect the essence and spirit of our nation's states and territories. Millennium Legacy Trails are representative of the diversity of trails; rail-trails and greenways, historic trails, cultural itineraries, recreation paths, waterways, alternative transportation corridors and many other types of trails. As First Lady Hillary Rodham Clinton said when she announced these trails, "Each of them stitch a design in our landscape and together help to create a picture of America."

First Lady Hillary Rodham Clinton formally announced the Millennium Legacy Trails on October 21,



1999.

The following is a list of the 51 Millennium Legacy Trails.

Alabama: Pinhoti National Recreation Trail

Alaska: Chilkoot Trail

Arizona: Arizona Trail

Arkansas: Trail of Tears Routes

California: California Coastal Trail

Colorado: America the Beautiful Trail

Connecticut: Connecticut Impressionist Art Trail

Delaware: The Coastal Heritage Greenway

[District of Columbia: Metropolitan Branch Trail](#)
[Florida: Florida National Scenic Trail](#)
[Georgia: Coastal Georgia Greenway](#)
[Hawaii: The Hana Highway](#)
[Idaho: North Idaho Centennial Trail](#)
[Illinois: I&M Canal Trail](#)
[Indiana: Monon Rail-Trail Corridor](#)
[Iowa: American Discovery Trail: Iowa Route](#)
[Kansas: Kanopolis State Park Multi-use Trails](#)
[Kentucky: Pine Mountain Trail](#)
[Louisiana: The Tammany Trace](#)
[Maine: Acadia National Park Trail](#)
[Maryland: BWI Trail/Baltimore & Annapolis Trail/ Colonial Annapolis Maritime Trail](#)
[Massachusetts: Norwottuck Network](#)
[Michigan: Southeast Michigan Greenways Trail](#)
[Minnesota: Willard Munger State Trail](#)
[Mississippi: Mississippi Delta Blues Trail](#)
[Missouri: The Katy Trail](#)
[Montana: Route of the Hiawatha Rail-Trail](#)
[Nebraska: The Cowboy Recreation and Nature Trail](#)
[Nevada: Tahoe Rim Trail](#)
[New Hampshire: Franconia Notch State Park Recreation Trail](#)
[New Jersey: Highlands Trail](#)
[New Mexico: El Camino Real de Tierra Adentro \(The Royal Road of the Interior\)](#)
[North Carolina: Blue Ridge Heritage Trail](#)
[North Dakota: Bismarck/Mandan Missouri Valley Trail](#)
[Ohio: The Buckeye Trail](#)
[Oklahoma: Standing Bear Native American Memorial Park & Trail](#)
[Oregon: Historic Columbia River Highway State Trail](#)
[Pennsylvania: Pittsburgh to Harrisburg Greenway](#)
[Rhode Island: Rhode Island Statewide Greenway System](#)
[South Carolina: The Palmetto Trail](#)
[South Dakota: George S. Mickelson Trail](#)
[Tennessee: Cumberland Trail State Park](#)
[Utah: Bonneville Shoreline Trail](#)
[Vermont: Lake Champlain Bikeways](#)
[Virginia: New River Trail State Park](#)
[Washington: John Wayne Pioneer Trail](#)
[West Virginia: Greenbrier River Trail](#)
[Wisconsin: Hank Aaron State Trail](#)
[Wyoming: Wyoming Continental Divide Snowmobile Trail](#)

[Puerto Rico: The Rio Camuy Cave Park](#)
[Virgin Islands: St. Croix Heritage Trail](#)

COMMUNITY MILLENNIUM TRAILS

Community Millennium Trails include thousands of trails across the United States which commemorate and interpret the communities they serve, be they large or small. Each trail in this category is a trail in its most basic form: a path, either physical or conceptual, connecting places and people.

American Hiking Society, in cooperation with Rails-to-Trails Conservancy, coordinated the application process and designation of the Community Millennium Trails category.

Click here for the [Trail Nomination Listing](#)



*Made possible by grants from
American Express Company and
the National Endowment for the Arts*

Community Millennium Trails Nomination Listing

The following trails have been designated Community Millennium Trails under the Millennium Trails initiative based on their special value to their communities. Community Millennium Trails designations will be ongoing. Please select a state from the pull-down menu below and press the Go button to display the Trails for that state.

State:

Wyoming

1. Bozeman Trail

Sheridan

**2. FORT BRIDGER STATE HISTORIC SITE/OREGON/PIONEER TRAILS/ LINCOLN
HIGHWAY
FORT BRIDGER**

3. Greater Cheyenne Greenway

Cheyenne

4. Jackson Hole Community Pathways

Jackson

5. Lincoln Highway

Medicine Bow

6. Lincoln Highway

Fort Bridger

7. Lucinda Rawlins Trail

Guernsey

8. Medicine Lodge State Archeology Site

Hyattville

9. Mountain Plains Heritage Park Trail

Buffalo

10. OREGON MORMON TRAILS

FORT BRIDGER,

11. Overland Trail

Green River

12. Wyoming Continental Divide Snowmobile Trail

Cheyenne

MEDIA ROOM

The Millennium Trails initiative offered many wonderful opportunities for public promotion and education. We invite you to read this section which includes select speeches, press releases and recent press coverage about Millennium Trails.

[Press Coverage and Releases](#)

[Text of Key Speeches](#)



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the National Endowment for the Arts.*

APPENDIX H

**MEMORANDUM OF UNDERSTANDING
FOR THE
ADMINISTRATION AND MANAGEMENT OF
NATIONAL HISTORIC AND NATIONAL SCENIC TRAILS
AMONG THE
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT,
NATIONAL PARK SERVICE,
AND THE
U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AND THE
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
AND THE
NATIONAL ENDOWMENT FOR THE ARTS**

I. BACKGROUND

America's network of National Historic and National Scenic Trails commemorates this Nation's rich natural and cultural heritage. Each trail represents a mosaic of partnerships among citizens, landowners, trail users, and public agencies at the National, Tribal, State, county, and local level. Since enactment of the National Trails System Act in 1968 (hereinafter "the Act"), the Bureau of Land Management (hereinafter "BLM"), the USDA Forest Service (hereinafter "FS"), and the National Park Service (hereinafter "NPS") have become administrators of one or more of these trails. Federal transportation funds, administered by the States through the Federal Highway Administration ("FHWA" hereinafter), became a major funding source for trails and trail related projects with enactment of the Intermodal Surface Transportation Efficiency Act of 1991 and the

Transportation Equity Act for the 21st Century in 1998. Federal funds, administered by the National Endowment for the Arts ("NEA" hereinafter) to support high quality, community centered public arts projects, have become a major funding source for trail related projects along the nation's millennium legacy trails.

The National Trails System Act of 1968, as amended, identifies four types of national trails: scenic, historic, recreation, and side/connecting. This Memorandum of Understanding (MOU) addresses only the national historic and national scenic trails because they are Congressionally designated, are typically interstate in extent, and involve multiple Federal jurisdictions. For the purposes of this MOU, these two trail types will henceforth be referred to as the "National Trails".

II. AUTHORITIES

This Agreement is entered into under the authorities of the National Trails System Act of October 2, 1968 (16 U.S.C. 1241-51) as amended, the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1701 et. seq.) as amended, and the Government Performance and Results Act of 1993 (31 U.S.C. 1101) ("GPRA" hereinafter).

III. PURPOSES AND PRINCIPLES

This MOU encourages long-term interagency coordination and cooperation to further the spirit and intent of the National Trails System Act by preserving and strengthening the visitor satisfaction, administration, management, protection, cultural enhancement, cooperation, partnerships, and funding of those lands and resources associated with the National Trails.

The signatories to this MOU pledge to carry out the full administrative and management responsibilities of the Act with an emphasis on quality service and efficient and effective expenditure of Federal funds through cooperation among the Federal agencies involved. In addition, they pledge to improve and make more efficient this Federal level partnership by adhering to the following principles:

A. VISITOR SATISFACTION

Current and future visitors to National Trails will be provided with opportunities to seek an enjoyable and memorable trail experience. Through the provisions of this MOU, the cooperating agencies will work together to ensure that their jurisdictional boundaries are not viewed as an impediment to providing quality recreational opportunities and service.

B. ADMINISTRATION

Each National Trail, established by law, is assigned for administration to a specific Federal agency by either the Secretary of the Interior or the Secretary of Agriculture, as designated by Congress. Subject to available funding, the administering agency exercises trailwide responsibilities under the Act for that specific trail. Such responsibilities include coordination among and between agencies and partnership organizations in planning, marking, certification, resource preservation and protection, interpretation, cooperative/interagency agreements, and

financial assistance to other cooperating government agencies, landowners, interest groups, and individuals.

C. MANAGEMENT

Various government and private entities own or manage lands along each National Trail. Management responsibilities often include inventorying of resources and mapping, planning and development of trail segments or sites, compliance, provision of appropriate public access, site interpretation, trail maintenance, marking, resource preservation and protection, viewshed protection, and management of visitor use.

D. CULTURAL ENHANCEMENT

Collaborative partnerships, spurred by the Millennium Trails initiative, have served to unite land management agencies with cultural agencies and organizations to promote and strengthen the cultural significance of National Trails. Trails better serve their communities when trail managers integrate cultural and transportation objectives.

E. COOPERATION AND PARTNERSHIPS

Interagency cooperation is desirable and has proven to be a productive and efficient means of implementing the intents of the Act by improving communication and achieving better administration and management of the National Trails and their associated resources. Cooperation achieves more efficient public service and less duplication of government operations than if each agency operates independently. Signatories to this MOU recognize the critical role of private organizations, Tribal governments, State and local governments, and individual landowners in most aspects of administration, management, and funding of National Trails. Participating agencies will engage other Federal partners as needed to broaden Federal support for the components of the National Trails System.

F. FUNDING

Each Federal agency involved with National Trails has its own budget or funding system for carrying out activities related to trail administration and management. The land managing agencies agree, within the limits of Agency authorities, to coordinate requests for and obligation of funds related to the National Trails System to eliminate duplication of effort and increase effectiveness. When possible, agencies may be able to assist each other in carrying out specific projects.

Therefore, the parties to this MOU desire to promote and further the spirit and intent of the Act among themselves and in partnership with any other Federal agencies involved with the trails.

IV. SCOPE

A. Policy. The signatory agencies to this MOU will cooperate together in formulating policies which affect the trails, fully reflecting the missions and statutory authorities of each agency involved.

B. Planning. Planning for National Trails at all levels, especially at the project level, should ensure consistency, efficiency, and avoid duplication. Trail planning should, to the maximum extent possible, be interagency and interdisciplinary in nature to make the best use of available expertise and data and to ensure a comprehensive approach. Trailwide and segment specific planning will be consistent with the intent of the Act and the authorities of each agency involved.

C. Budget. The land management agencies which are parties to this MOU will coordinate budget submissions to ensure effective use of public funds pertaining to the National Trails. In addition, agencies may work together under subsequent funding arrangements if the transfer of funds is appropriate and funds are available.

D. Staffing. Agencies party to this MOU should identify personnel at all levels who work with the National Trails. Each agency shall provide the services of these individual as appropriate and feasible to implement the work described in this MOU. To foster closer communication and coordination, the parties of this MOU may exchange staff working on the National Trails whenever appropriate and authorized by law.

E. Reporting. The MOU agencies will cooperate to develop a unified tracking system to document trail specific and system wide accomplishments. This tracking system would include both statistical and descriptive items to record the changes and growth of the National Trails System as a whole.

V. STATEMENT OF WORK

All of the parties to this MOU resolve as appropriate and feasible to:

A. Policy

5-1 Participate regularly in the Federal Interagency Council on Trails to discuss and coordinate policy, budget, and other matters pertaining to the National Trails System and this MOU. Field staff will be encouraged to attend these meetings for matters relevant to them.

5-2 Coordinate contacts with constituents to avoid public confusion and duplication. Reach out broadly to National Trails System partners to inform them of programs that can benefit national trails.

5-3 Initiate supplemental and trail specific interagency agreements to carry out the intentions of this MOU.

B. Planning (also see 5-16 below)

5-4 Participate in statewide, metropolitan, and local planning and project programming, corridor and trail management plans, and other planning, to the extent these plans affect agency responsibilities for National Trails.

5-5 Efficiently carry out all necessary natural and cultural resource compliance actions associated with the planning and management of National Trails.

C. Coordination with Partners

5-6 Coordinate with and encourage Tribal governments, State agencies, other governmental agencies, and private organizations to coordinate their programs related to National Trails.

5-7 Foster collaborative interagency trail training with partners.

5-8 Foster regularly scheduled meetings for each National Trail to enhance communication and cooperation. These meetings should involve all key stakeholders, including Federal trail administrators and managers, nonprofit partners, landowners, State agencies, and others concerned with the Trail.

D. Reporting

5-9 Develop a unified tracking system, including statistical and descriptive items concerning trail specific and system wide accomplishments to document GPRA goals. This data will be reported annually to agency heads and departmental secretaries of the signatories to this MOU.

5-10 As funds allow, develop coordinated and standardized interagency mapping and Geographic Information Systems (GIS) for National Trails (including standards for metadata).

5-11 Locate all components (and alignments for potential segments, where possible) of the National Trails System on appropriate maps and data sets to identify conservation and protection opportunities and to help prevent damage or adverse impacts from development projects.

E. National Trail Administrators

In addition, the BLM, FS, and NPS, as administrators of the components of the National Trails System, jointly resolve to:

5-12 Formulate a unified set of administrative policies, as needed, interpreting the National Trails System Act concerning such matters as resource protection, use of trail markers and logos, visitor centers and interpretation, promotion, and the identity of the trails within agency structures.

5-13 Establish a point of administrative contact for each National Trail by October 1, 2001, who will maintain a list of the affected on the ground National Trail management offices and trail administrators in each agency. Personnel at all levels of each agency who work with National Trails as part of their regular duties will be identified. Each agency will also provide the services of these individuals, including interagency crews and contractors, to cooperatively implement the terms of this MOU in such fields as resource identification, cartography, history, archeology, and interpretation. The National Trail administrators will meet annually as a group to discuss issues related to the implementation of this MOU and other common business.

5-14 Capitalize on the talents, skills, and knowledge of appropriate agency staff to avoid duplication of effort. Key staff contacts, both programmatic and along each trail route, identified by the administrative contact for each trail, will maintain good internal and external

communication, especially the dissemination of the contents of this MOU to all appropriate agency offices.

5-15 Coordinate between staffs of trail administering and trail managing agencies to take maximum advantage of each agency's programs and expertise.

5-16 Coordinate interagency actions affecting National Trails to ensure that agency actions and plans are in harmony with the intent of the Act and with National Trail development and conservation efforts. This will assure maximum public benefits, avoid duplication of effort, avoid public misunderstandings, and help prevent adverse impacts to National Trail resources and the desired trail visitor experiences.

5-17 Conduct collaborative planning efforts affecting National Trails. Each agency with administrative responsibility for a specific National Trail will arrange for trailwide plans in conjunction with other agencies and jurisdictions that have on the ground management and planning responsibilities. Each comprehensive management plan (CMP) shall refer to on the ground agency management plans and any constraints they may place on the trail's identity and operations. Ideally, National Trail CMPs will be approved, signed, and endorsed by representatives of the trail's major Federal, Tribal, State, and nonprofit partners. In turn, field, district, forest, and park plans shall include discussion of National Trail values and policies when they are next revised for the trail segments in those areas. CMPs will be revised every 15 to 20 years, or as changing conditions dictate.

5-18 Foster appropriate actions which enhance each National Trail through such means as local and statewide agreements, land use authorizations and permits, regulations, resource management, protection and development projects, interpretive services, trail marking, site specific planning, and regulatory and compliance functions. Each trail administrator may assist landowners, as permitted by statutory authority in accomplishing these management responsibilities through subsequent funding arrangements.

5-19 Encourage innovative implementation of the purposes and work elements of this MOU, to the extent resources and authorities permit.

5-20 Coordinate agency budget submissions for National Trails activities as they are sent forward to their respective Departments. Activities which involve interagency transfer of funds shall be implemented by subsequent funding arrangements.

VI. TERMS OF AGREEMENT

A. Effective Date of MOU: This MOU is executed as of the date of the last signature shown below and shall run for a period not to exceed 5 years, at which time it will be subject to review, renewal, revision, or expiration. This MOU is only in effect when all of the parties have signed.

B. Modifications: Modifications within the scope of this MOU shall be made by the issuance of a written modification, signed by representatives of all signatories herein, prior to any changes being performed.

C. Termination: Any party(s) may, in writing, terminate its participation in this MOU in whole, or in part, at any time before the date of expiration.

VII. PRINCIPAL CONTACTS

The principal agency contacts for this Agreement are:

NPS: Steve Elkinton, Program Leader, National Trails System
 Address: National Park Service
 US Department of the Interior, MS 3622
 1849 C Street, N.W.
 Washington, D.C. 20240
 (202) 565-1177; fax (202) 565-1204
 E-Mail: steve_elkinton@nps.gov

BLM: Deborah Salt, National Trails Coordinator
 Address: Bureau of Land Management
 6221 Box Springs Blvd.
 Riverside, CA 92507
 (909) 697-5309; fax (909) 697-5299
 E-Mail: deb_salt@ca.blm.gov

FS: James B. Miller, Dispersed Recreation Manager
 Address: USDA Forest Service
 PO Box 96090
 Washington, D.C. 20090-6090
 (202) 205-1313; fax (202) 205-1145
 E-Mail: jbmiller01@fs.fed.us

FHWA: Christopher B. Douwes, Recreational Trails Program Manager
 Address: FHWA HEPH-30 Room 3301
 400 7th Street, S.W.
 Washington, D.C. 20590
 (202) 366-5013; fax (202) 366-3409
 E-Mail: christopher.douwes@fhwa.dot.gov

NEA: Tony Tighe
National Endowment for the Arts
1100 Pennsylvania Avenue, N.W.
Washington, D.C. 20506
(202) 682-5616; fax (202) 682-5613
tighet@arts.endow.gov

VIII. SPECIAL PROVISIONS

A. Non-Fund Obligor Document. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties of the MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.


B. Restrictions for Delegates. Pursuant to the *United States Code*, Title 41, Section 22, no member of, or delegate to, Congress shall be admitted to any share or part of this MOU, or any benefits that may arise there from.

C. Participation in Similar Activities. This MOU in no way restricts any signatory from participating in similar activities with other public or private agencies, organizations, and individuals.

D. Responsibilities to the National Trails System Act. Nothing in this MOU abrogates the accountability of the designated administering agencies and FHWA from achieving the purposes of the Act. In addition, nothing in this MOU abrogates the responsibility of any Federal land managing agency to manage its trail resources according to the laws, rules, and regulations providing its management authority over such lands.

E. Nondiscrimination. During the performance of this MOU, the parties agree to abide by the terms of Executive Order 11264 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.

IX. APPROVALS


Robert Stanton, Director
National Park Service

JAN - 3 2001

Date


Nina Hatfield, Acting Director
Bureau of Land Management

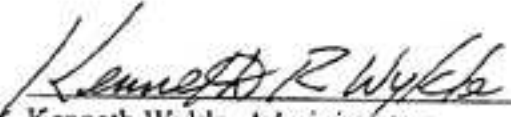
JAN - 3 2001

Date


Mike Dombeck, Chief
USDA Forest Service

JAN 19 2001

Date


Kenneth Wykle, Administrator
Federal Highway Administration

12 Jan '01
Date


William Ivey, Chair
National Endowment for the Arts

19 Jan. 01
Date

APPENDIX I

**Public Lands Advocacy/Petroleum Association of Wyoming
National Trails System White Paper**

BACKGROUND:

President Clinton issued Executive Order 13195 - Trails for American in the 21st Century on January 18, 2001 to **"achieve the common goal of better establishing and operating America's national system of trails"**. Highlights follow:

Federal Agency Duties

In cooperation with Tribes, States, local governments and interested citizen groups -- protect, connect, promote, and assist trails of all types throughout the US to:

- Provide trail opportunities of all types and protecting trail corridors to the degrees necessary to ensure trail values remain intact, **including trails not formally designated by Congress**
- Coordinate maps and data for the national trails system and Millennium Trails network (newly formed program to designate National [16], Legacy [rail and waterways, recreation paths, etc.] and Community [foot paths] Trails) to ensure trails are connected into a national system
- Promote and register National Recreation Trails in conjunction with Millennium Trails

Federal Interagency Council on Trails

The Council, initiated in 1969, is comprised of representatives from BLM, National Park Service, US Forest Service, Federal Highway Administration and other interested agencies, to:

- Enhance and integrate all trails into a fully connected system
- Coordinate mapping, signs, cultural interpretations
- Develop plans and recommendations for a national trails registry and database

FEDERAL ACTION

Wyoming BLM has been charged with developing a program using National Historic Preservation Act authorities and the newly formed National Landscape Conservation System. As such the **management of trails has been raised to the level of national monument status**. BLM will:

- Conduct viewshed analyses **5 miles from the centerline** of each trail according to established ground data protocols (e.g., **from a height of 5 feet at a 360° radius every 100 meters along trails**) using National Park Service protocols that could utilize visual horizons in interest areas.
- Construct a predictive modeling process for trails
- Prepare a statewide Context Study to determine whether new trail segments should be registered as historic taking into account trace of trail, graves, campsites, pony express and stage stations, fords and crossings, inscription sites and landmark features. The study will also evaluate all landscape types outside the 1/2-mile corridor established in the Trails Act.
- Determine historical and cultural significance of trail segments using 7 integrity criteria contained in the National Historic Preservation Act regulations (36 CFR § 60)
- Prepare a Trails Management Plan to be used in amending resource management plans.

IMPACTS ON THE PETROLEUM INDUSTRY

- Major impediments to oil and gas development on public lands, despite President Bush's EO 13211
- Increased project and NEPA costs
- Increased mitigation exceeding the 1/2 mile trail corridor currently required in RMPs (**1/4 mile on either side of the trail or line of sight, whichever is less**)
- Additional or expanded industry-funded cultural surveys
- Case-by-case industry-funded project level studies
- Increased restrictions on exploration and development activities based upon a virtually unlimited line-of-site criterion from the centerline of each trail
- Ignores industry's ability to reasonably mitigate potential impacts

RECOMMENDED CHANGES TO EXECUTIVE ORDER 13195

- Limit protection to Congressionally designated trails and registered historic sites
- Limit protection of trail corridors to current requirement of 1/2 mile
- Reaffirm valid existing lease and property rights associated with trail corridors
- Provide for public and peer review of National Trails System Handbook
- Revise Millennium Trails Network protocols

APPENDIX J



Texaco Exploration and Production Inc
Denver Region
Rock Springs Operating Unit

1515 9th Street
P O Box 1629
Rock Springs WY 82902-1629
307-352-5100

September 19, 2001

Petroleum Association of Wyoming
951 Werner Court, Suite 100
Casper, WY 82601

Attention: Dru Bower

Dear Dru:

In preparation for your upcoming meeting with the Council on Environmental Quality, Texaco offers an example of a federal agency roadblock to the development of new gas reserves. A well in northwest Colorado, in which Texaco has made application to drill, have been delayed due to BLM staffing issues and one individual within that organization who opposed the drilling of this well because of sensitive soils.

The well in question is the Duncan-Van Schaick #1-3, located in Moffat County, Colorado. The Bureau of Land Management office in Craig, CO is the agency with responsibility for processing the Application for Permit to Drill (APD) for this well and it is this agency that has delayed approval of this permit.

The APD for this well was submitted in time to drill in December 2000, but because of the delay in getting approval, it was not drilled until August 2001. An 8-month processing time for a single APD is considered unreasonable, yet there is little visible effort by this BLM office to shorten processing time. In the end, the permit had conditions to construct the access road to specifications far exceeding any other oilfield road which added \$70,000 to the cost of this project.

I would be happy to supply you with any additional information you may need to draw attention to the difficulties we are experiencing in developing additional gas reserves in the west.

Sincerely,

A handwritten signature in black ink, appearing to read "R.S. Vincent".

Robert S. Vincent
Operating Unit Manager

Chronology of Events:
Duncan-VanSchaick #1-3 Application to Drill
Moffat County, Colorado

9/18/00 Staked well

10/10/00 Submitted Notice of Staking to BLM in Craig, Colorado.

10/25/00 Conducted on-site inspection with BLM. The inspector from the Craig Office was not available. He was working on grazing permits, and was told by his manager that a person from the Meeker Office could fill in. The on-site went well, and no major difficulties were found or discussed.

11/??/00 Texaco's Scott Hall, Terry Belton, and Dallas Bennett met with BLM personal in Craig to discuss future drilling plans. At this meeting it was revealed that BLM was concerned about sensitive soils on the well pad and access road. Texaco agreed to address any concerns and complete an engineered road plan. Also at this time Scott Hall ask the BLM about getting a drilling permit before the Raptor nesting season begins in February. They said they would do the best that they could do considering their lack of personal.

2/1/01 APD not approved. We were told it is being held up by the sensitive soils issue and now raptor nesting. Texaco agreed to hire a consultant to conduct a raptor nest inventory. This was completed in April and concluded that there were no nesting raptors in the area. BLM biologist was satisfied and signed off on the EA.

5/??/01 BLM scheduled another onsite inspection. At this meeting the sensitive soils issue was discussed and BLM admitted that they did not have a reason to not approve our APD.

6/28/01 BLM approved APD with conditions that we hire an engineering firm to over-see the pad and road construction. The conditions required certain compaction requirements. Before the conditions the road and pad would cost approximately \$50,000. The actual cost was over \$120,000.



Texaco Exploration and Production Inc
Denver Region
Rock Springs Operating Unit

1515 9th Street
P O Box 1629
Rock Springs WY 82903-1629
307-352-3100

September 20, 2001

Petroleum Association of Wyoming
951 Werner Court, Suite 100
Casper, WY 82601

Attention: Dru Bower

Dear Dru:

In preparation for your upcoming meeting with the Council on Environmental Quality, Texaco offers an example of a federal agency roadblock to the development of new gas reserves. A well in southwest Wyoming, in which Texaco has made application to drill, have been delayed due to unresolved historic trail issues.

The well in question is the Rim Rock #22-13, located in Lincoln County, Wyoming. The Bureau of Land Management office in Kemmerer, WY is the agency with responsibility for processing the Application for Permit to Drill (APD) for this well and it is this agency that has delayed approval of this permit.

A chronology of events for this APD is shown on the attached. We have also attached copies of relevant letters and communications in regards to this issue. Please note that this APD was filed on May 1, 2001. It is now almost 5-months later and the APD is still in process. The likelihood of it being approved in time to drill this well before the November 15, 2001 big game wintering restrictions come into effect is slim.

Dru, as you have been involved with this issue from early on, I know you can explain to the CEQ very effectively the frustration we are going through just to get one well drilled. I would be happy to supply you with any additional information you may need to draw attention to the difficulties we are experiencing in developing additional gas reserves in southwest Wyoming.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. S. Vincent', with a long horizontal flourish extending to the right.

Robert S. Vincent
Operating Unit Manager

Chronology of Events:
Rim Rock #22-13 Application to Drill

- March 20, 2001: Notice of Staking submitted to BLM-Kemmerer, WY office to stake the Rim Rock #22-13 well.
- March 26, 2001: Application for Permit to Drill was submitted to the Wyoming Oil and Gas Conservation Commission.
- April 3, 2001: On-site field inspection with BLM-Kemmerer Field Office representatives. During the field staking, the BLM representative requested we move the location so as to be more than ¼ mile away from the Slate Creek Cutoff trail. The access road to the location was also redesigned so as to minimize the visual impact from the trail. Since it was noted that there was evidence of prairie dogs in the area, the BLM requested we conduct a Black-footed ferret survey. Texaco agreed to comply with all these requests.
- May 1, 2001: Application for Permit to Drill (APD) submitted to the BLM-Kemmerer, WY office.
- Amended Application for Permit to Drill was submitted to the Wyoming Oil and Gas Conservation Commission (WOGCC) to account for the location change made during the on-site inspection. This led to a request for a location exemption as the well site was too close to the lease line per State of Wyoming Spacing rules. The exception was agreed to by the WOGCC on June 15, 2001.
- May 10, 2001: The archaeological survey was completed and submitted to the BLM. Cultural resource clearance was recommended for this project from the third-party archaeologist.
- June 5, 2001: The access road plan was approved by the BLM.
- July 10, 2001: Telephone conversation with Jeff Rawson, Field Manager of the BLM-Kemmerer Field Office regarding the status of the APD's. Rawson indicated the delay in the permits is due to:
1. Recent 'things' dictating their actions to issuing permits near historic trails,
 2. A viewshed analysis is going on right now. He did not know if they were looking 3 or 5 miles on each side of the trail,
 3. Most actions to date have dealt with withholding lease sales until they have guidelines, however they are now affecting permits,
 4. They are not clear on how to deal with APD's, therefore they decided to open up the issue to other interested parties (beyond the NEPA process). A letter was sent to the National Parks

- Service (NPS) and the Oregon-California Trail Association (OCTA) for their comments. (Copies of the letters are attached)
5. Finally, they are looking to meet with all interested parties to see if they can work things out.

July 24, 2001:

Telephone conversation with Jeff Rawson to inquire of the progress of their work. Rawson said:

1. In a meeting with Don Stimpson (BLM-Cheyenne State Office) that they have not decided yet how to deal with trails, but to expect an interim memo this week with guidance how to proceed with permitting until the viewshed analysis is completed and that stipulations will be placed on new leases near only Congressionally Designated Trails.
2. There was another Field Office meeting scheduled for July 27 to discuss this issue and,
3. There is a meeting planned again with Don Stimpson on August 15, 2001.
4. A response was received from both the NPS and OCTA (copies attached) indicating their opposition to the drilling of these wells.

August 1, 2001:

Dallas Bennett and I met with various BLM-Kemmerer Office employees as well as a representatives from the National Parks Service, OCTA and the Lincoln County Historical Society (attendee list is attached). The meeting took place in the BLM office and a field visit to the well locations was included. It was noted that the people who wrote the letters objecting to the drilling of these wells had not visited the site before.

Following the field visits, Rawson asked to meet with Dallas Bennett and me in his office. He agreed that there should be no delay in approving the APD for the Rim Rock #11-13 well as that well could not reasonably impact the viewshed from the small trail segment over 2000 feet, and across the highway from the wellsite. There would be a delay in approval, however, as they have to gain concurrence from the Wyoming State Historical Preservation Office (SHPO) and they have 15-days to respond.

Rawson asked at that time for some mitigation measure for the Rim Rock #22-13 well from Texaco. Our response was that we met all of the conditions for this well according to the Resource Management Plan and complied with all the requests made by the BLM during the staking. We were at a loss as to what type of trail mitigation would be appropriate as the site was over ¼ mile away, any production facilities there would not break the horizon, and there were multiple signs of development already within view (wellsites, Exxon Shute Creek Plant and Highway 372).

It was unclear what type of mitigation the BLM was asking for. An idea to bury the production tanks was suggested by the NPS. This idea was rejected due to the added regulations regarding underground storage tanks. Another idea to directionally drill this well from a surface location further away from the trail. This idea was rejected as the economics of the well could not justify the added costs. Another idea was to install "low-profile" equipment. As the facilities, as viewed from the trail, would not break the horizon, this idea was deemed not reasonable. Another option to locate the production facilities out of view from the wellsite was examined but this proved to be impractical.

In light of Texaco's view that we had met all of the conditions placed upon this well by the RMP and no logical mitigations to lessen any perceived impact to the trail were offered, Rawson stated he would attempt to get clear guidance from the State BLM office on how to proceed.

- August 6-8, 2001: The Black-footed ferret survey was conducted. The report submitted to the BLM concluded there were no presence of black-footed ferrets in the area.
- August 21, 2001: Phone message from Jeff Rawson. Rawson stated they had received the modified archaeological report for this well and have submitted their opinion of "no adverse impact" to SHPO for their review and requested an expedited review.
- Sept 13, 2001: Telephone conversation with Jeff Rawson. Rawson stated that SHPO has concluded the BLM's review does not contain sufficient information to agree with their assessment of "no adverse affect" and have requested additional information to conduct their review. In a meeting with his staff and a teleconference with SHPO, they decided to go ahead and get panoramic photographs from the trail, noting all the development visible from the trail. SHPO also stated in their letter that they will not be able to conduct their review of the new data until September 24, 2001 due to other commitments.

Rob,

In consideration of time and a short staff today, please excuse the informal nature of this note but I wanted to respond to the points of our discussion this A.M.

Attached are two copies of letters sent out on the Rimrock wells concerning trails issues. Same letter but to different addressees. Maps are also attached to the letters.

The trails that we are currently looking at for "viewshed" concerns are as follows:

Oregon Trail

California Trail

- Also looking at the Sublette Cutoff, Slate Creek Cutoff and Dempsey-Hockaday Cutoff which are associated with both the Oregon and California Trails

Mormon Trail

Pony Express Trail

As I mentioned earlier we have a team of people doing a viewshed analysis right now that should provide info by this fall. This work will only entail the physical setting of the trails in that the trails will be mapped and a computer generation of the area that could be visibly seen from the trail.

We are looking at taking a field inspection of the rimrock well locations sometime the week of July 30 and will let you know as soon as we can as to the specific date. On the tour should be BLM staff, Texaco representation and any interested publics (i.e. OCTA) that may wish to go along. I would characterize the tour as just assessing the situation and discussing concerns and any potential resolution of concerns as appropriate. It is my intent to finish processing your APDs as soon as we can.

Any questions please call me at (307) 828-4502.


Jeff Rawson
July 16, 2001

8100 (C80)

Cultural Case Numbers: 04701163 & 04701173
Lease Numbers: WYW-132418 & WYW-103326

July 6, 2001

DELIVERY CONFIRMATION NUMBER 0904 7690 0001 6953 7115

Don Hartley
Wyoming Chapter Preservation Officer
Oregon-California Trails Association
2087 Fir Drive
Rock Springs, WY 82901

Re: Texaco Exploration & Production, Inc., Rim Rock 22-13 and Rim Rock 11-13 Wells

Dear Mr. Hartley:

The purpose of this letter is to solicit comments, concerns or information you may have regarding two proposed gas well locations in Lincoln County, Wyoming. On May 2 and 15, 2001, the Bureau of Land Management (BLM) Kemmerer Field Office received Applications for Permits to Drill from Texaco Exploration & Production, Inc. for their proposed Rim Rock 22-13 and Rim Rock 11-13 Wells. The Rim Rock 22-13 Well is proposed in the NE¼ of the SE¼ of Section 13, Township 23 North, Range 113 West, about 1500 feet north and within view of the a contributing portion of State Creek Cutoff of the Oregon-California National Historic Trail. The Rim Rock 11-13 Well is proposed in the NW¼ of the NW¼ of the same section, about 2000 feet west and within view of another contributing portion of the State Creek Cutoff. The proposed well locations and access roads, and the portions of the State Creek Cutoff that may be affected by this proposed action, are identified on the enclosed map. The wells are located in a developed gas field that was previously analyzed in 1987 under the *Record of Decision for Expanded Moxa Arch Area Natural Gas Development Project Environmental Impact Statement*. As noted on the attached map, a number of producing gas wells already exist in the vicinity of these proposed wells.

Historical studies of the State Creek Cutoff in the vicinity of the proposed well locations have been conducted previously. The studies provide historic contexts and overviews of these trail segments and detailed descriptions of their current physical conditions and settings. Three variants of the State Creek Cutoff were identified in this vicinity and most of their lengths were previously determined to lack sufficient National Register qualities of integrity to contribute to the trail's National Register eligibility, due to the degree of modern developments within their view-sheds. However, two segments within view of these proposed wells were evaluated as retaining sufficient physical and environmental integrity to contribute to the National Register eligibility of this National Historic Trail.

The BLM is currently reviewing the proposal and gathering information and public input from interested parties to contribute to our disclosure document, pursuant to the National Environmental Policy Act. The applicant contracted cultural resource inventories that provide documentation for our determinations pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended in 1992.

Please provide us with any information, comments or concerns you may have within 30 days of receipt of this notice. If we have not heard from you within 30 days of your receipt of this letter, we will proceed with our standard review of these applications. Your cooperation and involvement in this project are greatly appreciated. If you have any questions please contact Lynn Harrell at (307) 828-4515.

Sincerely,

JOE JEFF LAWSON

Joe Lawson
Field Manager

✓ Enclosure 07.18.01 RMS

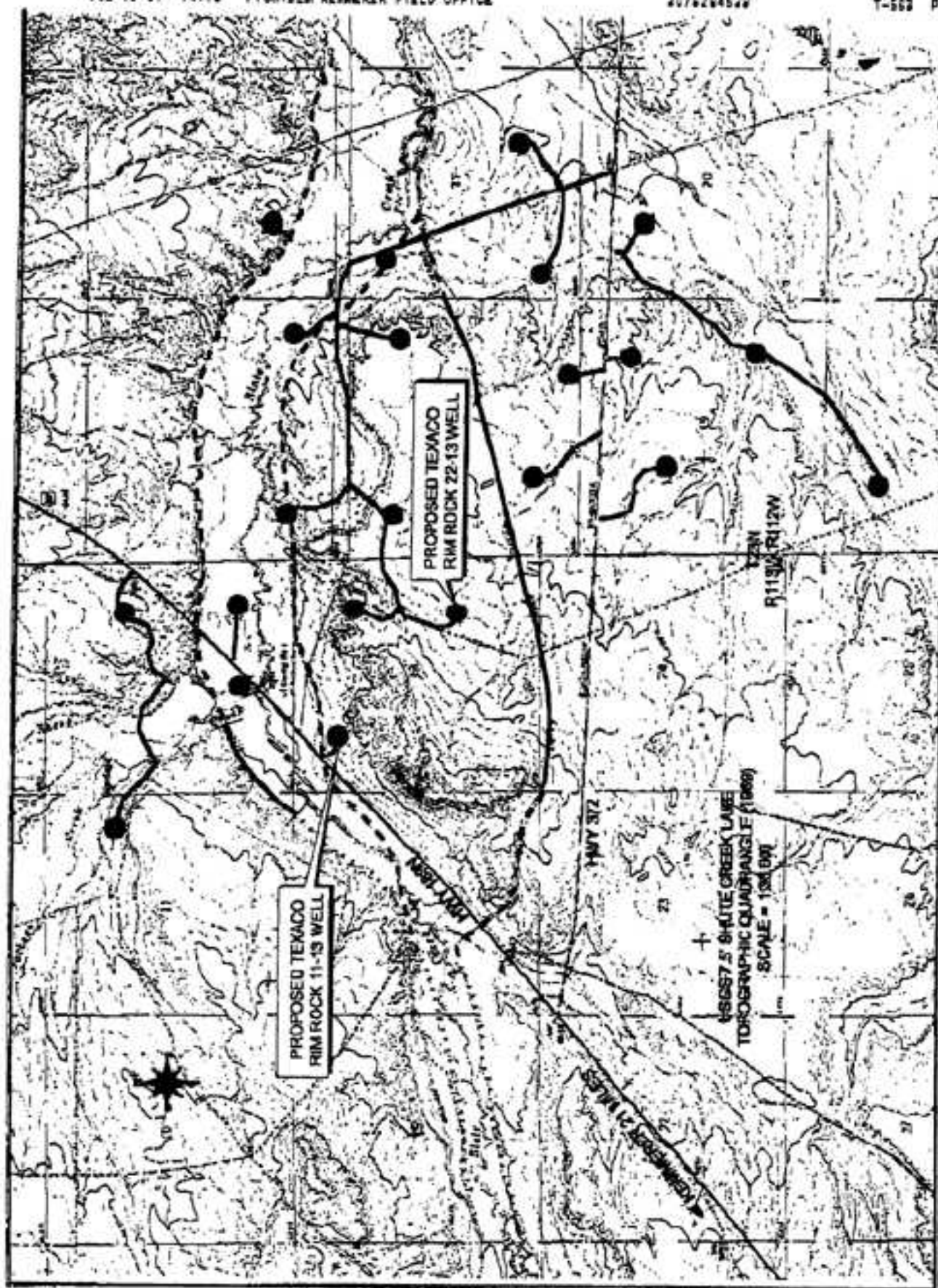
cc: ✓ Tim Nowak (WFO 930)

Dick Ackerman

✓ National Preservation Officer
Oregon-California Trails Association
3027 Twin Oak Place, NW
Salem, OR 97304-1228

RMS 07.18.01

✓ Vicky Padockie, Secretary
Lincoln County Historical Society
1031 Beech Avenue
Kemmerer WY 83101



Cultural Case Numbers: 04701163 & 04701172
Lease Numbers: WYW-122412 & WYW-100525
8100 (DSO)

July 6, 2001

DELIVERY CONFIRMATION NUMBER 0304 2980 0001 6953 7288

Jane L. Krakow
National Park Service
Long Distance Trails Office
P.O. Box 45155
Salt Lake City, UT 84145-0155

Re: Texaco Exploration & Production, Inc., Rim Rock 22-13 and Rim Rock 11-13 Wells

Dear Mr. Hartley:

The purpose of this letter is to solicit comments, concerns or information you may have regarding two proposed gas well locations in Lincoln County, Wyoming. On May 2 and 15, 2001, the Bureau of Land Management (BLM) Kemmerer Field Office received Applications for Permits to Drill from Texaco Exploration & Production, Inc. for their proposed Rim Rock 22-13 and Rim Rock 11-13 Wells. The Rim Rock 22-13 Well is proposed in the NE¼ of the SE¼ of Section 13, Township 23 North, Range 113 West, about 1500 feet north and within view of the a contributing portion of Slate Creek Cutoff of the Oregon-California National Historic Trail. The Rim Rock 11-13 Well is proposed in the NW¼ of the NW¼ of the same section, about 2000 feet west and within view of another contributing portion of the Slate Creek Cutoff. The proposed well locations and access roads, and the portions of the Slate Creek Cutoff that may be affected by this proposed action, are identified on the enclosed map. The wells are located in a developed gas field that was previously analyzed in 1997 under the *Record of Decision for Expanded Moxa Arch Area Natural Gas Development Project Environmental Impact Statement*. As noted on the attached map, a number of producing gas wells already exist in the vicinity of these proposed wells.

Historical studies of the Slate Creek Cutoff in the vicinity of the proposed well locations have been conducted previously. The studies provide historic contexts and overviews of these trail segments and detailed descriptions of their current physical conditions and settings. Three variants of the Slate Creek Cutoff were identified in this vicinity and most of their lengths were previously determined to lack sufficient National Register qualities of integrity to contribute to the trail's National Register eligibility, due to the degree of modern developments within their view-sheds. However, two segments within view of these proposed wells were evaluated as retaining sufficient physical and environmental integrity to contribute to the National Register eligibility of this National Historic Trail.

The BLM is currently reviewing the proposal and gathering information and public input from interested parties to contribute to our disclosure document, pursuant to the National Environmental Policy Act. The applicant contracted cultural resource inventories that provide documentation for our determinations pursuant to Section 106 of the National Historic Preservation Act of 1956, as amended in 1992.

Sep-20-01 12:51pm From:TEXACO E&P INC ROCK SPRINGS AREA

3073525180

T-537 P.13/19 F-643

JUL-16-01 14:17 From:BLM KEMMERER FIELD OFFICE

3076284628

T-562 P.04/08 Job-131

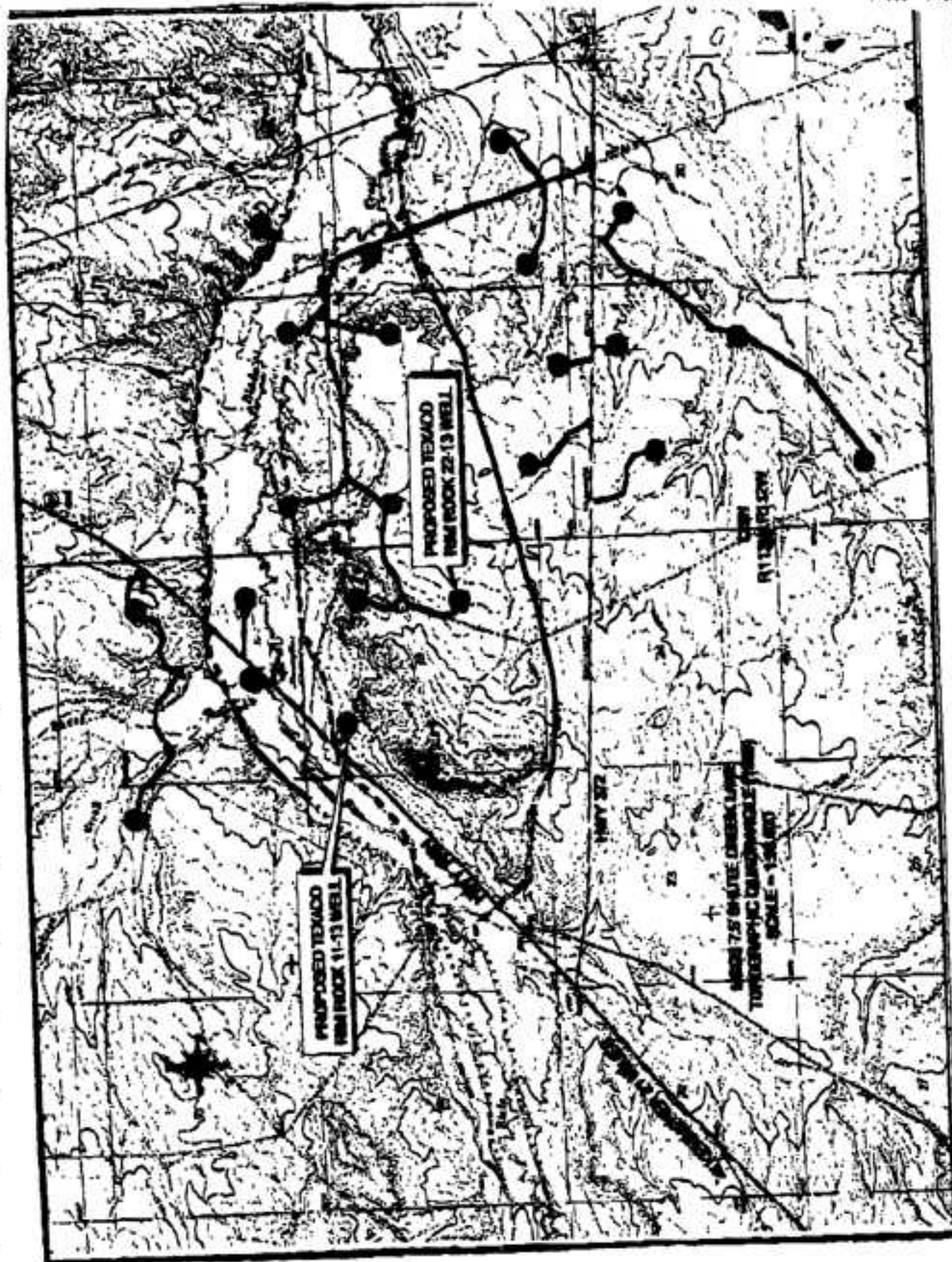
Please provide us with any information, comments or concerns you may have within 30 days of receipt of this notice. If we have not heard from you within 30 days of your receipt of this letter, we will proceed with our standard review of these applications. Your cooperation and involvement in this project are greatly appreciated. If you have any questions please contact Lynn Harrell at (307) 828-4616.

Sincerely,

/s/ JEFF RAWSON

Jeff Rawson
Field Manager

✓ Enclosure 07.16.01 JMS



MAP SHOWING PROPOSED TEXACO RIM ROCK WELLS IN THE MOXA ARCH GAS FIELD



FAX COVER SHEET

Bureau of Land Management
Kemmerer Field Office
312 Highway 189 North
Kemmerer, WY 83101



To: Rob Vincent
From: Teff Lawson
Date: 7/24/01

Number of Pages Including This Cover Sheet: 4

MESSAGE: as per phone message

Received Jul-24-01 09:55pm

From:3078284539

To:TEXACO E&P INC ROCK

Page 01

- 1) Mtg w/ Dan Stinson (State-Dir) -
 - not yet decided on trail issue; but as
 - Interim memo this wk w/ FO mgs. How to handle trails till reviewed analysis done
 - New leases will have slips for only Cal-Oreg Trail. (Just Cong. Designated trail)
- 2) State WY letter from PHW (Office of Federal Lands Policy)
- 3) Mtg 8/15 w/ Stinson
- 4) FO meeting 7/27 -> choose policy letter.



United States Department of the Interior

NATIONAL PARK SERVICE
CALIFORNIA, WYOMING, UTAH, OREGON & PORTLAND NATIONAL HISTORIC TRAILS
Long Distance Trails Office
224 South State Street, Suite 204
Portland, Oregon 97204
Bldg. 100, Unit 101-0155

BY AIR/REGULAR TO

July 16, 2001

Jeff Rawson
Bureau of Land Management
Kemmerer Field Office
312 Highway 189 North
Kemmerer, WY 83101-9710

Re: Texasco Rim Rock Project

Dear Mr. Rawson:

Thank you for the letter of July 6, soliciting information or comment about the proposed gas wells that Texasco Exploration & Production, Inc. has identified adjacent to the State Creek Cutoff of the Oregon and California Trails. Energy issues are proving a considerable threat to historic trail resources, especially in Wyoming.

The Rim Rock wells (22-13 & 11-13) are extremely close to the State Creek Cutoff and all indications point to an adverse effect on the historic (cultural) landscape resources of the trail. Even though some portion of the State Creek Route is determined non-contributing for National Register eligibility purposes, nevertheless it is adjacent to a cutoff presently considered for study in legislation related to the Oregon National Historic Trail. It is a route of the California National Historic Trail. Congress authorized both national trails, with the former in 1978 and the latter in 1992.

In 1999, the *Comprehensive Management and Use Plan and Environmental Statement* for the Oregon and California National Historic Trails was completed and the Record of Decision signed in November of that year. The State Creek Cutoff is recognized as a route of California National Historic Trail in the document, and the importance of the route is underscored and deemed worthy of protection measures.

Vicinal areas are a significant and important element in the protection of the national trails. The Texasco gas wells will be a very negative impact on the State Creek Cutoff. The wells, tanks, roads and probable pipelines will be observable from considerable distances. Every effort should be made to prevent the wells from being located in such proximity to the national trail.

Sep-20-01 12:53pm From-TEXACO E&P INC ROCK SPRINGS AREA
JUL-24-01 15:58 From:BLM KEMMERER FIELD OFFICE

3073525180
3078284539

T-537 P.18/19 F-643
T-584 P.03/04 Job-192

Please continue to keep this office apprised of activities and plans. Again, thank you for the letter of notification.

Sincerely,

Gene L. Krakow

Gene L. Krakow
Superintendent

cc: Wyoming State Historic Preservation Officer
Richard Ackerman, National Preservation Officer, Oregon-California Trails
Association

Received Jul-24-01 03:55pm

From-3078284539

To-TEXACO E&P INC ROCK

Page 03

Date: AUGUST 1, 2001

Purpose: DISCUSS EFFECTS OF WELLS ON NATIONAL HISTORIC TRAIL

Attendees:

DAVE MURPHY BLM 307-828-4548

Wally Mierzejewski BLM 307-828-4508

Dallas Bennett Texaco 307-352-5117

Dick Ackerman OCTA 507-581-0328

Dru Bower PA-W 307-234-5333

Robert Vriest Texaco (307) 352-5101

AL MULDER OCTA (801) 266-2567

LYNN HARRELL BLM (307) 828-4515

Don Hartley OCTA 307-382-3078

Michal Fagnano Pres LCHS 307-877-3292

Hilary Billman LCHS 307-877-3762

Arden Hines BLM 307-828-4503

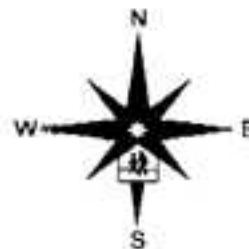
Jeff Pearson BLM 828-4507

Gene Krakauer NPS 801/539-4095



JIM GERINGER
GOVERNOR

State of Wyoming
Office of Federal Land Policy
Art Reese, Director



August 1, 2001

Jeff Rawson, Field Manager
BLM, Kemmerer Field Office
P.O. Box 632
Kemmerer, WY 83101

Dear Jeff:

It has come to the attention of the Office of Federal Land Policy that there appears to be an emerging problem regarding the issuance of Applications for Permits to Drill for Texaco Exploration and Production, Inc. and their proposed Rim Rock 22-13 and Rim Rock 11-13 wells. It is our understanding that these permits are being held in abeyance pending a proposed mitigation plan and imposed costs to the applicants for that plan. It has further come to our attention that it is the State Historical Preservation Office (SHPO) that is either proposing both the mitigation plans and attendant cost or is advising BLM in that direction. We have spoken to Richard Currit, the State Historic Preservation Officer, who has advised us that his office has no information on these wells in their data base and in fact they have not worked on this.

In addition, Mr. Currit has told us that because of the location of Highway 189 the placing of additional restrictions beyond the current 1/4 mile accepted buffer is academic. Finally, he emphasized that SHPO DOES NOT have the authority under any law, statute or regulation to make resource management decisions for ANY federal agency. These resource management decisions are solely reserved to the federal agency responsible for the undertaking. While the federal agencies are required to consult with his office and to seek a satisfactory resolution to any disagreements, final decisions regarding the size of a project APE or any required mitigation are the sole responsibility of the federal agency.

So that I can properly respond to constituents, the Wyoming Energy Commission and to the Governor (who was briefed by me this morning) regarding this issue could you please advise me of the status of this situation? I look forward to your prompt response.

Sincerely,

Art Reese

Art Reese, Director
Office of Federal Land Policy

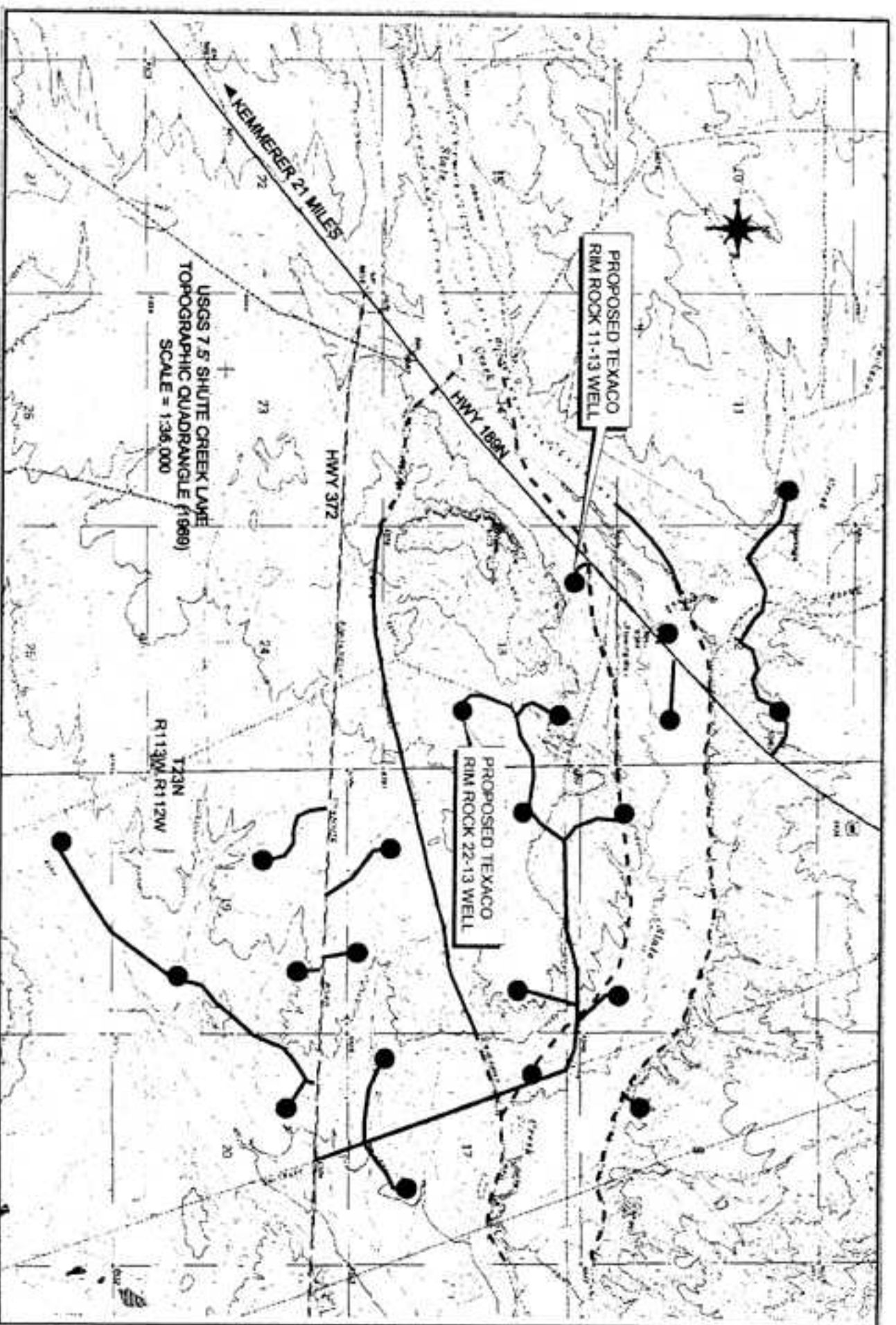
AR:jh

cc: Governor Geringer
State Historic Preservation Office
Steve Reynolds, WBC-Minerals
Ron Arnold, State Lands and Investments

Herschler Building, 1 West ♦ 122 West 25th Street ♦ Cheyenne, Wyoming 82002-0060

Phone (307) 777-3736 ♦ Fax (307) 777-3524

OFLP@state.wy.us



MAP SHOWING PROPOSED TEXACO RIM ROCK WELLS IN THE MOXA ARCH GAS FIELD

MEETING: TEXACO RIM ROCK WELLS ON THE SLATE CREEK TRAIL

Date: AUGUST 1, 2001

Purpose: DISCUSS EFFECTS OF WELLS ON NATIONAL HISTORIC TRAIL

Attendees:

DAVE MURPHY BLM 307-828-4548

Elly Mierzejewski BLM 307-828-4508

Dallas Bennett Texaco 307-352-5117

Dick Ackerman OCTA 507-581-0328

Dru Bower PAW 307-234-5333

Robert Vivint Texaco (307) 352-5101

AL MULDER OCTA (801) 266-2567

LYNN HARRELL BLM (307) 828-4515

Don Hartley OCTA 307-382-3078

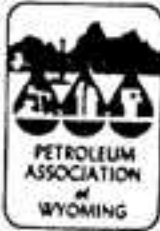
Mickey Fagnano Pres LCHS 307-877-3292

Hilary Billman LCHS 307-877-3762

Orlan Hiner BLM 307-828-4503

Jeff Pearson BLM 828-4507

Gene Krakow NPS 801/539-4095



PETROLEUM ASSOCIATION OF WYOMING

951 Werner Court, Suite 100
Casper, Wyoming 82601
(307) 234-5333

fax (307) 266-2189
e-mail: paw@pawyo.org
www.pawyo.org

July 9, 2001

Mr. Art Reese
Office of Federal Land Policy
STATE OF WYOMING
Herschler Building, 1W
122 West 25th Street
Cheyenne, Wyoming 82002-0600

Dear Mr. Reese:

The Petroleum Association of Wyoming (PAW) has recently become aware of an issue that will significantly curtail oil and gas development in the State of Wyoming. The Wyoming Bureau of Land Management (BLM) has been charged with developing a program using the National Historic Preservation Act authorities and the newly formed National Landscape Conservation System to develop a management plan for all trails, regardless of whether they are congressionally designated as historic. BLM has indicated it will pursue the following:

- Conduct a 360 degree viewshed analysis five (5) miles from the centerline of each trail according to established ground data protocols;
- Construct a predictive modeling process for trails;
- Prepare a statewide context study to determine if new trail segments and historic sites should be registered as historic;
- Determine historical and cultural significance of trail segments using seven (7) integrity criteria contained in the National Historic Preservation Act regulations; and
- Prepare a Trails Management Plan to be used in amending resource management plans.

The current mitigation in the Resource Management Plan's allows for a ¼ mile restriction or avoidance area from the centerline of the trail or the visual horizon (whichever is less). This restriction currently applies only to Congressionally Designated Historic Trails, which includes the Oregon/Mormon/Pioneer Trail in Wyoming. Other Historic Trails and Historic Sites that may be recommended for listing and that are bound by the same ¼ mile restriction include the Overland Trail, Cherokee Trail, and the Point of Rocks to South Pass Road.

With a possible ten (10) mile corridor around trails and unknown mitigation to protect the visual horizon for trails, we are extremely concerned that the program will be used to limit development; therefore, greatly impacting revenues to the State of Wyoming.



951 Werner Court, Suite 100
Casper, Wyoming 82601

Mr. Art Reese
Page 2
July 9, 2001

PAW and Public Lands Advocacy (PLA) are jointly working on this issue and have drafted a "White Paper", which is enclosed for your perusal along with factual and historical information regarding trails.

At this time, we would ask for the involvement of the Wyoming Office of Federal Land Policy. In light of the potential significant impacts to oil and gas revenue generated from public lands in Wyoming, we believe your involvement in this issue is critical. Once again, it appears that the federal government is attempting to adopt a program that subordinates the State's economic well being to excessive preservation activities.

Please feel free to contact me at PAW to discuss future actions regarding trails. Thank you for your prompt attention to this matter.

Sincerely,

Dru Bower
Vice President
Petroleum Association of Wyoming

Cc: Dave True
Curt Parsons
Claire Moseley
Public Lands Committee

APPENDIX K

BUREAU OF LAND MANAGEMENT

A CONCEPT PAPER FOR NATIONAL HISTORIC TRAILS

- WHY ARE WE CONCERNED ABOUT MANAGING NATIONAL HISTORIC TRAILS?
- ◆ The emigrant trails in Wyoming were designated as National Historic Trails (NHTs) by Congress as amendments to the 1968 National Trails System Act. The Oregon and Mormon Pioneer Trails were added in 1978, while the California and Pony Express Trails were added in 1992.
 - ◆ In 1999 the National Park Service, under the authority of the National Trails System Act, completed *Comprehensive Management and Use Plans* for the Oregon, California, Mormon Pioneer, and Pony Express NHTs. The objectives of these plans are:
 - Administrative Consistency
 - Protection of Trail Resources
 - Enhance Visitor Use & Interpretation
 - ★ The plans also recognize that **viewsheds** contribute to value of the NHTs.
 - ◆ In 2001, Executive Order 13195, "Trails for America in the 21st Century" specifically ordered that Federal agencies are to:
 - ★ Protect **Trail Corridors** associated with high priority sites & segments of NHTs
 - ★ Ensure **Trail Values** remain Intact
 - ◆ Visitor use of the NHTs has exploded due to:
 - Commemorative Trail Celebrations:
 - Oregon Trail Sesquicentennial 1993
 - Mormon Pioneer Trail Sesquicentennial 1997
 - California Trail Sesquicentennial 1999
 - Pony Express Sesquicentennial (proposed for 2010)
 - Construction of the National Trails Center in Casper, Wyoming (proposed opening 2002)
 - LDS (Mormon) Church Martin's Cove Visitor Center. Dedicated 1997
 - Annual Mormon pilgrimages/handcart re-enactments
 - ★ Annual Trails Visitation in Wyoming has been estimated to have been 150,000 - 250,000 in the year 2000.

□ WHAT IS BLM'S LONG-TERM STRATEGY?

◆ Trail Inventory

- Define centerline through GPS/GIS mapping (completed).
- Photo-document all segments of the trails through low-elevation aerial photography (completed).
- Conduct on-the-ground reconnaissance to ground-truth trail trace (to be completed as part of Historic Context Study).
- Conduct Class III inventory and map historic features (to be completed as needed).

◆ Viewshed Analysis (Proposed completion September 30, 2001)

- Capture existing BLM trail-related GIS data
- Incorporate National Park Service trail-related GIS data.
- Overlay GIS layer on landform data and produce viewshed map defining visibility of landforms and other spatial data from centerline of the NHTs.

◆ Historic Trails Context Study

- Synthesize historic data on NHTs.
- Identify trail-related property types.
- Develop guidance on evaluating specific trail-related property types.
- Evaluate historical integrity of all NHT segments in Wyoming.
- Provide management recommendations and prescriptions for specific trail segments.
- Review existing RMP Decisions and provide recommendations for RMP modifications.
- Complete Final Report - (proposed completion November 30, 2002).

◆ Wyoming National Historic Trails Management Plan [Decision Document]

- Define high priority sites and trail segments.
- Develop management prescriptions for specific trail segments.
- Public scoping of management document
- Record of Decision (proposed completion October 1, 2003).

- ◆ Amend Resource Management Plans
 - ★ 5 RMPs in Wyoming are to be revised between 2002 and 2006.

□ WHAT IS BLM'S SHORT-TERM STRATEGY?

- ◆ Policy Applies to 4 National Historic Trails Corridors Only
 - Oregon, California, Mormon Pioneer and Pony Express Trails included.
 - Does not apply to Nez Perce NHT or other historic trails
- ◆ Oil & Gas Lease Sales
 - New Lease Notice to be included on all oil and gas leases sold beginning with December sale.
 - Affects only parcels in proximity to 4 designated NHTs.
 - Lease Notice will inform all lessees that mitigation measures may be required.
 - Lease parcels will not be withheld from future sales without significant justification.
 - Withheld parcels will require Deputy State Director, Division of Minerals and Lands Authorizations, determination.
- ◆ All Use Authorizations
 - ★ BLM will develop Operational Interim Guidance for evaluating effects of proposed uses of NHT corridors.
 - ★ BLM will apply a three-level categorization scheme of "Historical Integrity" to all affected trail corridor segments based on High, Moderate or Low Historical Integrity.
 - ★ Different management prescriptions will apply to each category as follows:
 - **Low Historical Integrity:**
 - ✓ trail segments in this category have already been significantly compromised.
 - ✓ will require no protection except for specific trail-related sites or features, if any.
 - **Moderate Historical Integrity:**
 - ✓ trail segments have had some previous intrusions or impacts.
 - ✓ trail segment still possesses some

- ✓ historic interpretive value to trail users, any additional compromise of the trail segment must be consistent with existing intrusions or impacts so as not to further degrade the level of historical integrity.

- **High Historical Integrity:**

- ✓ trail segments have no significant evidence of contemporary intrusions.
- ✓ currently appear much as they did during historic use of the trail.
- ✓ management prescription is to mitigate any adverse effects which may result from proposed use, only to extent possible.

- ◆ **Lease Rights vs. Other Use Authorizations**

- ★ Leaseholders retain certain legal rights which cannot be denied.

- BLM cannot require proposed development off of the leasehold.
 - BLM cannot require the leaseholder to move the project more than 200 meters without leaseholders consent.
 - BLM cannot require mitigation measures to the extent that it would make the lease uneconomical to develop.
 - BLM can require all reasonable mitigation measures pursuant to Section 6 of the lease.

- ★ If proposed use is not connected to a lease

- Proposed use must be adhere to the appropriate level of mitigation.
 - If adverse effects from the proposed ~~lease~~^{USE} cannot be mitigated, the use authorization may be denied.

- **WHAT'S THE BOTTOM LINE?**

- ☺ This policy requires a partnership with trail users, industry, and adjacent private landowners to protect NHT resources while allowing for multiple use.

APPENDIX L

LEASE NOTICE NO. 2

BACKGROUND:

The Bureau of Land Management (BLM), by including National Historic Trails within its National Landscape Conservation System, has recognized these trails as national treasures. Our responsibility is to review our strategy for management, protection, and preservation of these trails. The National Historic Trails in Wyoming, which include the Oregon, California, Mormon Pioneer, and Pony Express Trails, ~~as well as the Nez Perce Trail~~, were designated by Congress through the National Trails System Act (P.L. 90-543; 16 U.S.C. 1241-1251) as amended through P.L. 106-509 dated November 13, 2000. Protection of the National Historic Trails is normally considered under the National Historic Preservation Act (P.L. 89-665; 16 U.S.C. 470 et seq.) as amended through 1992 and the National Trails System Act. Additionally, Executive Order 13195, "Trails for America in the 21st Century," signed January 18, 2001, states in Section 1: "Federal agencies will...protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by: (b) Protecting the trail corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails to the degrees necessary to ensure that the values for which each trail was established remain intact." Therefore, the BLM will be considering all impacts and intrusions to the National Historic Trails, their associated historic landscapes, and all associated features, such as trail traces, grave sites, historic encampments, inscriptions, natural features frequently commented on by emigrants in journals, letters and diaries, or any other feature contributing to the historic significance of the trails. Additional National Historic Trails will likely be designated amending the National Trails System Act. When these amendments occur, this notice will apply to those newly designated National Historic Trails as well.

STRATEGY:

The BLM will proceed in this objective by conducting a viewshed analysis on either side of the designated centerline of the National Historic Trails in Wyoming for the purpose of identifying and evaluating potential impacts to the trails, their associated historic landscapes, and their associated historic features. Subject to the viewshed analysis and archaeological inventory, reasonable mitigation measures may be applied. These may include, but are not limited to, modification of siting or design of facilities to camouflage or otherwise hide the proposed operations within the viewshed. Additionally, timing of operations and specification of interim and final reclamation measures may require relocating the proposed operations within the leasehold. Surface disturbing activities will be analyzed in accordance with the National Environmental Policy Act of 1969 (P.L. 91-190; 42 U.S.C. 4321-4347) as amended through P.L. 94-52, July 3, 1975 and P.L. 94-83, August 9, 1975, and the National Historic Preservation Act, supra, to determine if any design, siting, timing, or reclamation requirements are necessary. This strategy is necessary until the BLM determines that, based on the results of the completed viewshed analysis and archaeological inventory, the existing land use plans (Resource Management Plans) have to be amended.

The use of this lease notice is a predecisional action, necessary until final decisions regarding surface disturbing restrictions are made. Final decisions regarding surface disturbing restrictions will take place with full public disclosure and public involvement over the next several years if BLM determines that it is necessary to amend existing land use plans.

GUIDANCE:

The intent of this notice is to inform interested parties (potential lessees, permittees, operators) that when any oil and gas lease contains remnants of National Historic Trails, or is located within the viewshed of a National Historic Trails' designated centerline, surface disturbing activities will require the lessee, permittee, operator or, their designated representative, and the surface management agency (SMA) to arrive at an acceptable plan for mitigation of anticipated impacts. This negotiation will occur prior to development and become a condition for approval when authorizing the action.

APPENDIX M

1792/1310 (040)
Haystacks Geophysical Project

September 13, 2001

Dear Reader:

Enclosed you will find the Decision Record and Finding of No Significant Impact which describes the Bureau of Land Management's decision for Veritas' Haystacks Geophysical Project proposal adjacent to the Adobe Town Wilderness Study Area (WSA). Hand-laying geophones within the WSA will be allowed as the activity meets the non-impairment criteria.

The environmental assessment was released for a 25-day comment period. Based upon comments, BLM prepared an errata (see Appendix A) which further clarifies the text in the environmental assessment. BLM received 437 comment letters. Appendix B provides a summary of comments received and BLM's response to them.

BLM appreciates the public's participation during preparation of the environmental analysis. The Decision Record can be linked from the Rock Springs website. The address for Rock Springs' website is http://www.wy.blm.gov/field_offices/rsfo/rs_home.html. Copies of this Decision are also available at the Rock Springs Field Office in Rock Springs. You may call Teri Deakins at 307-352-0211 to request copies. If you have questions about this action, please call Ted Murphy at 307-352-0321.

Sincerely,

/s/ John McKee

Field Manager

Enclosure

**DECISION RECORD
FINDING OF NO SIGNIFICANT IMPACT
HAYSTACKS GEOPHYSICAL EXPLORATION PROJECT**

Introduction

Veritas GDC Land Inc. (Veritas) submitted a "Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations" to the Rock Springs Field Office in April 2001 to conduct geophysical operations on private, state, and federal lands in the Haystacks/Monument Valley area in southeastern Sweetwater County, Wyoming (Map 1). The project area covers approximately 133 square miles with about 82 square miles on public lands managed by the Bureau of Land Management (BLM).

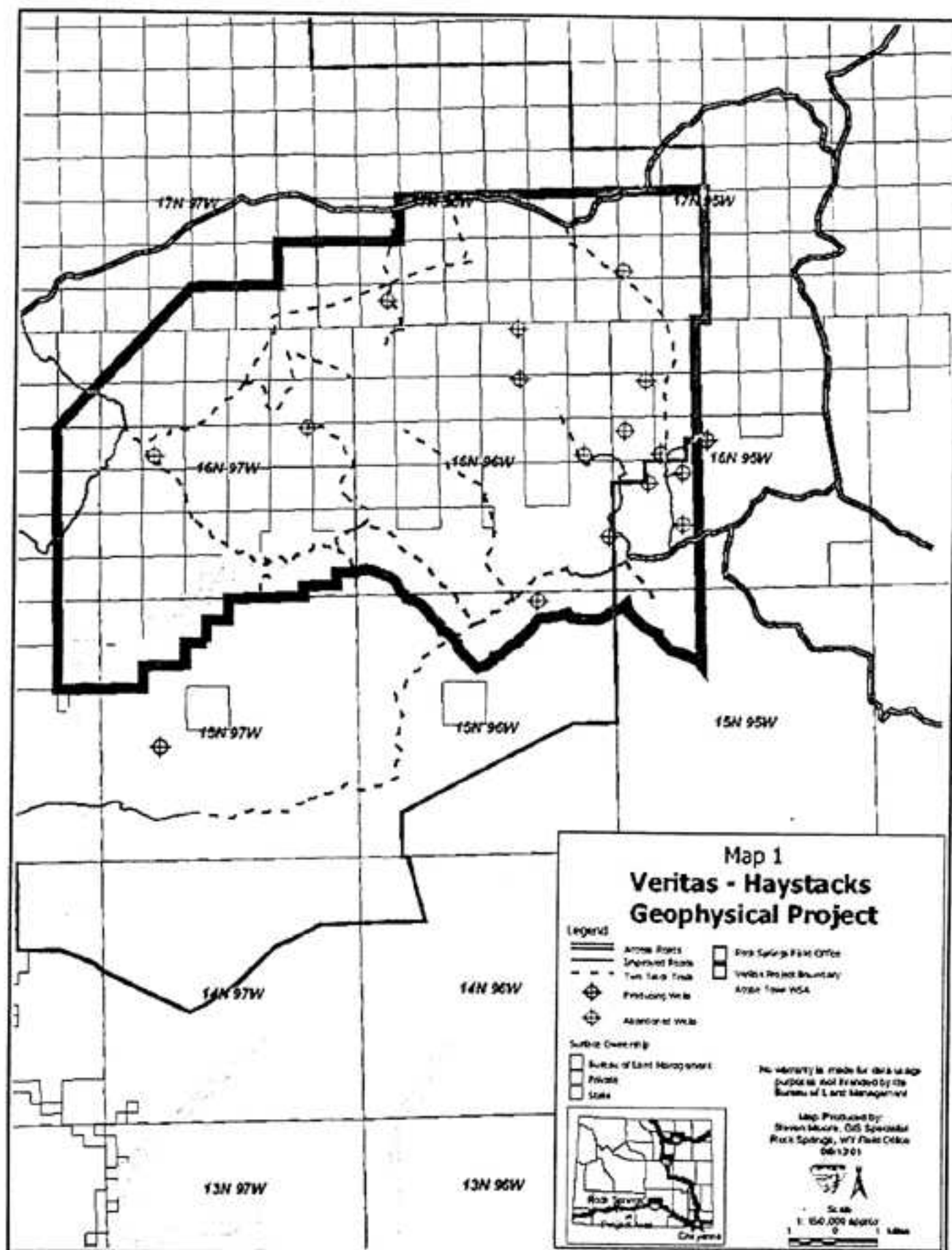
The following federal sections are affected by the proposal:

T17N R97W	Sections	32, 34, 36
T17N R96W	Sections	20, 22, 24, 26, 28, 30, 32, 34, 36
T17N R95W	Sections	20, 28, 30, 32
T16N R98W	Sections	12, 14, 24, 26, 36
T16N R97W	Sections	2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24-28, 30, 32-36
T16N R96W	Sections	2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 24-36
T16N R95W	Sections	4, 6, 8, 16-21, 28-33
T15N R98W	Sections	2, 12
T15N R97W	Sections	4-8
T15N R96W	Sections	1-5, 9, 10
T15N R95W	Sections	4-6

Alternatives Considered

The *Haystacks 3-D Geophysical Exploration Project Environmental Assessment* (WY-040-01-108, EA) analyzed two alternatives. Under the Proposed Action, Veritas proposes to conduct geophysical operations using a "shothole" method where truck, buggy, or portable drills would drill holes 60 feet deep. Each hole would be packed with 15 pounds of explosive material and then backfilled with the drill cuttings. Once the holes are drilled and refilled, geophones lines (receivers) would be laid on the ground to record the sound waves as the explosives are discharged. In order to get optimal data (accurate readings of subsurface geologic structures and stratigraphy) on private and leased federal lands located adjacent to the Adobe Town Wilderness Study Area (WSA), geophones would be hand laid approximately 1 mile into the WSA. Helicopters would be used to transport equipment (geophones) and personnel into the WSA. Operations are scheduled to start with approval of the Notice of Intent and be completed before November 15th.

The No Action Alternative analyzed the consequences of denying Veritas' proposal. An alternative to eliminate any activity associated with geophysical operations within the WSA was considered but dropped from detailed analysis (see the EA for rationale).



Decision

Based upon the analysis contained in the aforementioned EA, the BLM approves Veritas' proposed action. Veritas may proceed with geophysical operations in the Haystack/Monument Valley area once all appropriate clearances (e.g., cultural, paleontological) are obtained and the Notice of Intent is approved. Geophysical operations will be subject to the following list of measures.

1. Geophysical activity is prohibited on crucial big game winter range from November 15 to April 30. Exceptions to this stipulation must be requested in writing. Granting an exception must be approved in writing by the Authorized Officer and will be subject to consultation with the Wyoming Game and Fish Department.
2. To protect greater sage grouse and mountain plover: seasonal restrictions within a .25-mile radius from the greater sage grouse strutting ground would apply between February 1 and May 15. A controlled surface use (CSU) restriction would apply from February 1 through May 15 from 6:00 p.m. to 9:00 a.m. daily on the lek. Seasonal restrictions may be applied through July 31 within an additional 1.75-mile radius from leks to protect greater sage grouse nesting habitat. Areas within that radius, not used for nesting, can be excepted, provided actual nesting areas are not affected. Clearances would be required for mountain plover if activities occur between April 10 and July 10.
3. Geophysical operations would not be allowed within the area of affect as determined by BLM wildlife biologists based on U.S. Fish and Wildlife Service guidelines, of occupied raptor nests until hatchlings have fledged.
4. The geophysical operator shall maintain a safe operating buffer between the geophysical operations and the existing facilities. The width of the buffer would be determined by the facility owner/operator.
5. Any facilities damaged, destroyed, or removed under this geophysical exploration operation shall be immediately repaired or restored to the original condition or it shall be replaced with similar facility.
6. The geophysical operator shall make every effort to avoid disturbing or altering fences. Gates shall be used when possible. If a fence must be crossed, it will be cut, with H-braces built to support the existing fence. Upon termination of activities the temporary opening will be permanently wired shut and the wires stretched to their original tension.
7. The geophysical operator shall conduct all operations in conformance with the *Programmatic Agreement For Onshore Oil And Gas Geophysical Exploration By and Among The Bureau of Land Management, the Advisory Council on Historic Preservation, and Wyoming State Historical Preservation Officer*, approved on January 3, 1991. An exception to these requirements may be granted, if the action meets NHPA requirements.
8. The geophysical operator shall offset all off-road vehicle traffic over a 50-foot wide swath on either side of the staked seismic line, so that one vehicle does *not* drive the same path as another vehicle.
9. The geophysical operator shall clean up all diesel or hydraulic fluid spills, including the contaminated soils. All spill-related material shall be hauled to a Wyoming Department of

Environmental Quality (DEQ) approved disposal site. Spills resulting from ruptured pipelines or well casings shall be cleaned up as directed by DEQ and the facility owner/operator.

10. As directed by the Authorized Office, the geophysical operator shall rip or disc, and reseed all reclaimed well-pads, roads, and/or pipeline rights-of-way that are disturbed by the geophysical operations. All trash, flagging, lath, etc. will be removed and disposed of in an authorized location.
11. The geophysical operator shall conduct no vehicle operations during periods of saturated ground conditions when surface rutting would occur. Surface ruts deeper than 3 inches will be cause for the operations to cease.
12. The geophysical operator shall conduct no explosive detonation within 500 feet of springs, flowing wells, or Federally owned stockwater wells.
13. Geophysical operations on BLM-administered lands will not be allowed on or within 100 feet of riparian areas, unless they are frozen to a depth that is capable of supporting the geophysical exploration vehicles.
14. The Geophysical Operator shall conduct all drilling and hole plugging operations in strict conformance with all Wyoming Oil and Gas Conservation Commission requirements.
15. A 200-foot buffer for the vehicles will be maintained at all riparian/wetland areas when working in the summer season. The receiver lines can be laid through these areas in the customary manner.
16. A Class I cultural resource inventory will be conducted by a qualified cultural resource consultant for the entire project area. Upon receipt of the Class I inventory, the BLM, in consultation with SHPO, will determine the area of potential effect and could prescribe additional inventory and/or avoidance strategies.
17. A Class III cultural resource inventory will be conducted for public lands where vehicle operations will occur. Such inventory will not be required for areas covered by existing inventory providing that such inventories meet current standards. Class III inventories will be designed to locate and prescribe avoidance routes or other mitigation for all eligible cultural resource sites encountered. Any cultural or historic sites will be avoided by at least 100 feet. Avoidance will be accomplished by having a BLM-permitted archaeologist flag or otherwise mark drive arounds and places where vehicles may not be driven.
18. The operator will use helicopters in areas where there are steep slopes and erosive soils in and around the Haystacks.
19. In accordance with the RMP, the operator will (has) contracted with a permitted paleontological consultant to survey public lands within the MVMA and map all the documented fossil sites. All documented sites will be avoided.
20. The Overland Trail will be avoided regardless of land ownership. No shotholes will be allowed within 300 feet of the trail. In no case will there be any visual disturbance to the trail corridor (0.25 mile either side of the trail). Should the Overland Trail be crossed by vehicles, it will only be in those areas of previous disturbance such as a road or pipeline.

21. Based on consultation with representatives of Native American Tribal governments and based on their recommendation, shotholes or geophones could be moved if necessary.
22. Any cultural resource (historic or prehistoric site or object) discovered by the operator, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. The operator shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery would be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The operator would be responsible for the cost of evaluation and any decision as to proper mitigation measures would be made by the authorized officer after consulting with the proponent.
23. Any existing weed populations and areas of new infestations found during geophysical operations will be treated with herbicides as soon as practical to contain them or prevent their spread.
24. Driving on sand dunes should be avoided by vehicles, and shotholes should be offset to the interdunal swales where possible. Should any steep-sided drainages be encountered, they will not be crossed by any vehicles to protect banks. Low bank areas can be used for drainage crossings. Any surface damage should be repaired to the satisfaction of the BLM inspector as soon as practical after the completion of operations but no later than March 2002.
25. Veritas should encourage their personnel and subcontractors to wear hunter orange during the hunting season as a safety precaution.
26. Should operations not be completed and the operator need to resume operations in the spring, the operator will be required to complete surveys for special status species in accordance with BLM requirement.

Rationale for the Decision

My decision to approve the proposed action is based upon the following:

- S The Proposed Action is in conformance with the land use plan which allows for geophysical operations.
- S The Proposed Action is consistent with management objectives and actions for the Monument Valley Management Area which specifies the area as open to mineral exploration provided mitigation can be applied to retain the resource values. The measures identified under the section entitled *Decision* assure that the resource values found in the management area remain protected.
- S The Proposed Action, specifically use of helicopters to transport personnel and equipment and the hand-laying of geophones to record seismic waves, meets the non-impairment criteria for interim management of wilderness study areas (see *Interim Management Policy and Guidelines for Lands Under Wilderness Review*). Additionally, an Interior Board of Land Appeals (IBLA) decision affirmed a previous decision to allow the use of helicopters and the hand-laying of geophones within WSAs as meeting the non-impairment criteria (114 IBLA 333). The rationale provided by IBLA for affirming the decision states "... while Congress has prohibited the Secretary from issuing oil and

gas leases within a BLM WSA, 30 U.S.C. 226-2(a) (Supp V 1987), Congress also provided that . . . nothing in this section shall affect any authority of the Secretary of the Interior . . . to issue permits for exploration for oil and gas . . . by means not requiring construction of road or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment." No construction of roads nor improvement to existing roads is proposed. In addition, certain public lands within the Adobe Town WSA have valid, existing leases although only a portion of an existing lease is within the area identified for hand-laying geophones (see Map 1).

- S BLM released the EA to the public on July 26, 2001 for a 25-day public review. No substantive comments, comments providing data to support claims, were received that require further analysis or selection of the No Action Alternative. Based on public comments, the text has been changed to correct or clarify the EA. These changes are shown in Appendix A, Errata. A summary of comments from the public and BLM responses are presented in Appendix B.
- S Since no listed, proposed for listing, or candidate (special status) species are anticipated to be affected by this action, concurrence from the U.S. Fish and Wildlife Service is not necessary. Other sensitive plant and animal species should not be negatively impacted by the action since important life events (e.g., rearing of young, seed set) have passed for the season. Should geophysical operations be delayed, mitigation to survey for such species would apply. Therefore, all species of concern (special status, sensitive, and other species of concern) would be protected.
- S Biodiversity Associates, et al., has submitted "A Citizens' Wilderness Inventory of Adobe Town" as new information. A review and field check of this information will occur as time and workloads allow. BLM has not verified that wilderness characteristics do or do not exist in the area inventoried in the submission. However, the proposed action will not cause irreversible effects or undue or unnecessary degradation to the resources in the project area, including any potential wilderness characteristics (size, roadless, naturalness, solitude or a primitive and unconfined type of recreation, supplemental values) that may occur. Therefore, it is not necessary to change or supplement the analysis documented in the EA.

Finding of No Significant Impact

Based upon the review of the EA, the BLM has determined that the Proposed Action with implementation of the mitigation measures identified above is in conformance with the Green River Resource Management Plan. Implementation of this decision will not have a significant impact on the human environment. Therefore, an EIS is not required.

Appeal

This decision is effective upon the date the decision or approval by the authorized officer. The decision or approval may be appealed to the appropriate office of the Interior Board of Land Appeals in accordance with regulations contained in 43 CFR 3150.2. If an appeal is filed, a copy of the notice of appeal must be filed in this office (Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901) within 30 days of receipt of the decision. This decision will be considered to have been received on the date that it is posted on the internet at http://www.wy.blm.gov/field_offices/rsfo/rs_home.html. The appellant has the burden of showing the decision or approval appealed from is in error.

If you wish to file a petition for stay pursuant to 43 CFR 3150.2(b), the petition for stay should accompany your notice of appeal and shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and
4. Whether the public interest favors granting a stay.

/s/ John McKee
Field Manager

Sept. 13, 2001
Date

Appendix A Errata

Several minor typing errors were inadvertently published with the EA. In addition, the text of the EA has been changed to either correct or clarify it's meaning based on comments received. The text of the EA is corrected as follows:

Page 1, 2nd paragraph should read "The project will be in all or a part of the following Federal sections."

Page 4, 1st paragraph, 8th line should read " Until an evaluation is made, the management objective for the area is to provide protection of wildlife,"

Page 4, 5th paragraph, last sentence should read ". . . issues were brought forth in their letter dated July 8, 2001.

Page 5, 1st paragraph, last sentence should read ". . . is proposed to be conducted in the late summer and fall of 2001, using"

Page 5, 2nd paragraph under section entitled Proposed Action, 3rd sentence should read "Buggy-mounted drills would be used in sand dunes and rougher terrain."

Page 7, Item 17 should read ". . . permitted Archaeologist flag or otherwise mark drive around . . ."

Page 9, 1st paragraph, 1st sentence should read "The project area encompasses a variety of landscapes with scarce roads and trails in generally poor condition."

Page 10, 2nd sentence under section entitled Native American Religious Concerns should read "Arrangements have been made for representatives of Tribal governments to visit the area."

Page 10, section entitled Off Road Vehicles, last sentence should read "ORV use in the area outside of the WSA and MVMA is limited to existing roads and trails."

Page 12, after last sentence under section entitled Visual Resource Management add "For those public lands located in the Rawlins Field Office, the VRM classification is Class III. Management actions for Class III public lands must be designed to partially retain the existing character of the landscape.

Page 13, Affected Environment, section title should read Threatened, Endangered, Proposed and Candidate Species

Page 14, Affected Environment, section entitled Threatened, Endangered, Proposed and Candidate Species, add the following paragraphs:

Mountain Plover is a species that is proposed for listing and habitat occurs within the project area. These birds occur in low-growing or open areas where vegetation seldom exceeds 6-10 inches. This species may also be found in black sagebrush, greasewood, and other species found in the sagebrush steppe.

The only riparian habitats found within the project area are associated with several seeps and springs on the south side of the Haystacks. A semi-riparian habitat area forms from annual snow cornice and is located on the east side of the Haystacks. No suitable habitat for the yellow-billed cuckoo has been identified within the project area and sightings of this species have not been recorded.

Page 19, Environmental Consequences/Impacts, Special Status Species, delete reference to mountain plover.

Page 13, Environmental Consequences/Impacts, section title should read Threatened, Endangered, Proposed and Candidate Species

Page 16, section entitled Off-Road Vehicle Use, 3rd sentence is changed to read "Additionally, the RMP recognizes that ORV use to conduct geophysical operations in areas where there are off-road vehicle use designations can be permitted following site specific analysis." Delete next sentence "Off-road vehicle use designations would be exceeded on public lands in the MVMA."

Page 19, Environmental Consequences/Impacts, Threatened, Endangered, Proposed, and Candidate Species, add the following behind last sentence.

Due to the timing of activity (late summer/fall of 2001), no impact is expected which would jeopardize the continued existence of mountain plovers. Should geophysical operations not be completed by November 15th, surveys in accordance with U.S. Fish and Wildlife Service's survey guidelines would apply between April 10th and July 10th as stated under the proposed action.

No habitat has been identified for the yellow-billed cuckoo and no sightings have occurred within the project area. Therefore, BLM determines that geophysical operations will not jeopardize the continued existence of the yellow-billed cuckoo.

Appendix B Summary of Comments on EA and BLM Responses

The EA was released to the public on July 26, 2001, for a 25-day review period, including placement of links on the BLM Wyoming State and Rock Springs Field Office websites. BLM received 437 comment letters or emails. All comment letters are summarized below (in italics) with BLM responses immediately following the comment. However, to save space, letters with a similar theme have been incorporated into one with each individual's name included at the top. BLM appreciates all those who took the time to comment.

1. *Ken Driese, Ed Sherline, Bill Willers, Donn Kesselheim, Mark Jenkins, Jack Clinton, Kelly Matheson, Jack States, Marilyn Dinge, Dave Skinner, Jonathan Matthews, Vanessa Parker-Geisman, Samantha Freeland, Mike Vandeman, Bobbie Flowers, Mark Giese, Annette and Hans Johnson, Gary Vesperman, Peter Aengst (Northern Rockies Regional Office, The Wilderness Society), Angie Young, Doug Campbell, Phil White, Garrett Clevenger, Pat and Jack Jeffers, Laurie Staake, Judi Davis, Nancy Petersen, Don Cohon, Martin Murie, Gaines and Lyn Whitcomb, Karyne Dunhar, Douglas Guilmet, Steve Ford, Bryan Faehner, Carole Shelby, Stephanie Reutner, Amy Williamson, Pat Bacon, Trisha Towanda, Martha Martinez Del Rio, Mary Morrison, Alexandra Majors, Michael Brose, Tim Stevens, Mark Sanderson, Michael Wall, Sigrid Mayer, William Anderson, Jeremy Minor, Mary Sanderson, Michael Durgain, Martie Crone, Paul Moss, Greg Sauer, Karen Miller, Charles Rumsey Jr., Jim Steltz, Patrick Huber, Dave and Betty Thomas, Neil and Jennifer Miller, Daniel Mika, Barry Reiswig, Mariha Christensen, Jack and Connie Iversen, Albert Bitner, Rolf Skar, Alyx Perry, Doug Shinneman, Bob Skogley, Debbie Daly (Animal Defense League of Arizona), Edward Kolsky, Elmer Kuball, Bob Giurgevich, Robert Lamb, Charles Hancox, Mimi Crenshaw, Darla Daly, Louise and Bright Springman, Kathy Moriarty, Vicki Rivers, Scott Dieberich, William McIntyre, Connie Wilbert, Sabine Jordan, Sara Haubert, Peggy Dobbins, Frank Calkins, Brook Bullige, Ruth Niswander, Erin Marcus, Linda Heinzl, Randy Luskey, Chole Hadaway, Gene Ball, Ryan Shinn, Donald Self, Jeff Knezovich, Chris Dietrich, Pam Jasue, Jessica Hepmyer, Kelly Thomas, Sharon Huston, Trevor Valoe, Palden Hester, Mikiah Boyo, Ian Wastboom, Carolyn Trottmann, R. Stomats, Frank Forey, R. Hersheope, Lee Retzlott, Cherly Korus, Ryan Watson, Michelle Hoycomb, Nicole Karfanta, Don Kennedy, Jerry Trotman, Joseph Baker, Rebecca Tweel, Robin Dean, Terra Eyl, Betsy Leverth, Leroy Moatoya, Karen Bailey, Jared Budd, Doreen Thurpton, Stephane Huston, Jeff Feaske, Polly Cox, Ted Manahan, Tony Martinez, Amanda Betux, Kelly Baker, Judy Johnson, Kurt Feld, Ruth Bly, Trace Krause, Kat Trague, Tedi Potts, Brian Fetterman, Melissa Landin, Keith Gaston, Robert West, Nick Spagnole, Marty Thompson, Brittany Budd, Paige Noon, Mary Wolpent, Karen Hare, Elizabeth Night, Anthony Ford, Joel Claypool, Andrew Stencel, Dan Woolcott, Cathy Gust, Rose Barela, Pat Dignan, Bergen Ekland, Martine Purdy, David Poncoby, Dawn Gable, Alicia Cook, Sandra Hendrickson, Jason Sterns, John Cavanagh, Joe Hendrickson, Barb Kachalode, Marsha Dinkel, Anita Aceves, Jim McNiece, Earline Hittel, Aurthur Anderson, Catherine Howell, Kristen Painter, Wendell Funk, Robin Smith, Cynthia Wutchiett, Max Kessler, John Sqanson. Another 29 individuals sent in cards but the names were illegible.*

Writing to express opposition to oil and gas exploration and drilling activities of any kind in the Adobe Town area of southwest Wyoming. Wyoming's basins are too often viewed as expendable in spite of their incredible beauty, their importance for protecting the full range of biodiversity in the State, and their relatively untouched character. We need to protect these examples of unique ecosystems rather than exploiting them for short term economic gain. Urge BLM to:

- S *Drop the project;*
- S *Assess the wilderness qualities of the proposed citizen's proposed Adobe Town Wilderness;*
- S *Adobe Town WSA as de facto wilderness and to not permit oil and gas exploration to trespass inside the boundaries;*
- S *Complete a full EIS which should assess how oil and gas development would affect all vulnerable or rare animals (e.g., midget faded rattlesnake, black-footed ferret, great basin gopher snake) and plants, and how the regions wilderness values and natural character would be affected.*

Thank you for your comments. Adobe Town WSA is managed in accordance with BLM's Handbook 8550-1, *Interim Management Policy and Guidelines for Lands Under Wilderness Review*. Any action that takes place within WSAs must meet non-impairment criteria. Hand-laying geophones (recording devices), and the use of helicopters, within WSAs meets the non-impairment criteria. Laying these geophones within the WSA is needed to get accurate data for privately held and federally leased minerals located adjacent to the WSA. No shot holes or exploratory oil or gas wells are proposed to be drilled in Adobe Town WSA. Although Congress precluded issuing new oil and gas leases on public lands under wilderness review, it did provide "... nothing in this section shall affect any authority of the Secretary of the Interior ... to issue permits for exploration for oil and gas ... by means not requiring construction of road or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment" (30 U.S.C. 226-3(a) (Supp. V 1987)). No roads are proposed for construction or improvement. Only Congress, with Presidential approval, can designate an area as wilderness.

National Environmental Policy Act (NEPA) requires preparation of an EIS if the action is considered "major" and/or impacts are "significant." Department of the Interior Manual 516 DM, Appendix 5, Section 5.3 defines major actions that normally require preparation of an EIS by BLM (see Federal Register Notice, Vol. 57 No. 62, starting pg. 10913 for latest version). Geophysical operations do not meet the criteria set forth for actions normally requiring preparation of an EIS nor are the impacts of conducting geophysical operations significant. Therefore, preparation of an EIS is not necessary.

It should also be noted that geophysical operations provide valuable information on where, as well as where not, to conduct exploratory drilling for energy resources. Further, a large portion of the area proposed for geophysical operations is located on private (or state mineral) lands (checkerboard land pattern) with the remaining on public lands, most with valid, existing federal oil and gas leases. Some of the area involved is currently being analyzed for natural gas exploration and development in a project known as the Desolation Flats Natural Gas Project in which an EIS is under preparation. The northern portion of the project area has already been analyzed (EIS) and approved for natural gas development in the Continental Divide/Wamsutter II Natural Gas Project EIS.

2. *Dave Kennedy, Howard Robertson, Keith Stevens, Mack Johnson, Ernie Williams, Greg Wood, Colleen and Stephen Leeson, John Linn, Mike and Pat Dighans, James Barlow, Nickalus Junt, Mike Poirier, Jim Olsen, Edward Hernandez, Jim Piaoah, Mark Wagaman, Krista Torres, Richard Trevino, Mike Bertness, Vincent Dewolf, Allan Sander, Luis Bonsembiante, Lisa Trevino, Howard Turvais, Sandy Schultz, S. Brooks, Nadviodad Vazquez, Dave Purcell, Scott Hoenmans, Dan Siegel, Shelly Watt, Debroah Sycavage, Dan Dooley, Troy Roach, Beverly Matthews, Dan Whitman, Brant Carwright, Chad Kalk, Byron Tegldine, Chris Peck, Dave Dutchover, John Deruberger, Henry Biggart, Cory Gifford, Faucto Blarco, Donnie Stone, Steve Potter, W. Rigby, Brad Hurt, Cooper Reiger, Juan Martinez, Jim Phillips, Donald Stafford, Tracy Nessler, Davion Bonnetts, Chevy Chase, Virginia Simmons, Joe Esparaza, Adrian Royos, Carlos Duque, Alfredo Malonado, Vicki Mauoz,*

Joe Rosas, Kennell McMillin, Frank Hail, Joe Cartwright, Greg Huey Patrick Payne, David Grunter, Paul and Marlene Sibley, Marty Hall, Hugh Fraser, Tom Makris, Jeff Harwell, Jennifer Schwartz, Daniel Murphy, James Morgan, George Crawford, Steven Mills, Willie Koenig, James Wooldredge, Alfonso Munoz, Daniel Hutt, Ricky Gonzales Jr., Robert Ramos, Jose Monar, Frank Garza, Graham Anderson, Juan Trevino, James Crawford, Javier Camarillo, Terry McCloud, William Sewando, Terry Donze, Jay Carmichael, Jon Allen, Kermit Krily, Thomas Hivoues, Teresa Trantum, Roger McGarry, Patrick Harts, Kirt Miller, Howard Robertson, Josh Nunn, Jerry Hasuer, Charles Webb, Matt Roth, Nancy Gilsar, John Harts, Juan Carrillo, Willie James Jr., Roger Lopez, Keon Allen, Sergio Sanchez, Roger Witt, Juan Martinez, Harry Chapman, Gwen Docelson, Tina Perez, Clarence Haws, Tony Orthman, Carrie Senanet, Billy Zucker, J Albill, David Bittle, John Cotton, R. McKay, Derrell Marintez, Albert Hardy, Francisco Janierreyes, Douglas Goodwin, Deanna Goodwin, Mills Lange, M. Willie, Raz Bams, Martin Ortiz, O. Robinson Jr., G. Pettinger, Julie Martin, Orlando Rodriguez, Anthony Perry, Michael Lege, Cerilo Carrillo, Martin Bails, Joe Aluter, Joe Ayalu, Richard Andersen, Arden Bach, Johnny Ruiz, Alejandro Martinez, Alvaio Pealez, Larry Pike, Will Huff, Cheyenne Miller, Mike Mayne, Nathan Williams, Larry Shoeini, Kevin O'Connell, S. Machuey, Vicente Salinas, Christopher LaPlante, Michael Bienevour, Scott Rothwell, David Coddling, Dave Moysey, Scott Harman, Rob Horine, Richard Rosencrans, Richard Garcia, Melissa Mrazek, Danielle Porter, David Cruz, Dan Chavry, Jessica Mrazek, James Devlin, Rebecca DuPont, Fred Meendsen, Karen Mallick, Roy Bennett, Rick Woodward (Bentwood, Inc.), John Ellis. The same letter was received by another 14 individuals whose names were illegible.

Support the Haystacks 3-D geophysical project being proposed by Veritas. Seismic information gathered on 3-D projects allows oil and gas exploration companies the opportunity to eliminate the expense and surface impact of drilling and reclaiming multiple exploratory wells. The short-term impact is minimal and the long-term impact is negligible.

Current energy demand will continue to grow in the future and projects such as this will go a long way in helping to meet this demand. Geophysical data gathered with 3-D projects is crucial in the exploration effort required in drilling successful wells. A hundred individuals will be needed to conduct the operations and each crew spends thousands of dollars that bolster the local economy.

Thank you for your comments.

3. Bill Spillman

Geophysical operations should be denied. This is a continuing attempt to chisel around the edges of the unique landscape that southwest Wyoming. One can see a steady stream of oilfield trucks when traveling north of Rock Springs and this is what BLM would subject all of Wyoming to. This desert will show scars of development for lifetimes, litter, and industrial waste. These out-of-state companies have no respect for the values of this land and are only here to take the cream. One issue that wasn't addressed at all is black-footed ferrets that I have personally seen in Sweetwater County over the past 10 years. As prairie dog populations continue to decline, it is more important than ever that any possible infringement of territory that may provide shelter for this endangered species needs quashed. There are many other issues that can be discussed for not allowing planning or outright development of this desert area and most or ignored by BLM as it rushes headlong to suck every last royalty dollar. This is a WSA and should unequivocally remain free from industrial consideration for development.

Thank you for your comments. BLM invites you to contact us to discuss your sightings of black-footed ferrets. Please see response to Comment #1.

4. Julie Kay Smithson, Joe and Phyllis Bell

While the area you are considering for [geophysical operations] is beautiful, it also very likely contains resources that can help our country provide its citizens with oil and gas, without importing it from halfway around the world. I seldom see a decision that puts the needs of the American citizens before the "deep ecology" individuals who purport to "speak for the plants and animals." I urge you to consider that oil and gas exploration will help keep our country healthy.

Thank you for your comments.

5. Warren Anderson

Drew an area 57 antelope license. Area 57 has historically been the hardest to draw and the best trophy area for antelope hunters in Wyoming. There are only 75 licenses in this vast area. This is one of the best wilderness hunting opportunities in America. Part of this area is the Adobe Town WSA. Horrified to discover that you have given preliminary authorization to the Veritas Haystacks project.

Wyoming Game and Fish Commission 2001 regulations set the limit for type 1 (bucks, does, fawns) antelope licenses at 300 and type 6 (doe/fawn) at 25 in area 57 for 2001. Type 1 antelope season runs from September 20 to October 15, and type 2 runs from September 1 to October 14. The Haystack project area affects only a small portion of area 57. During geophysical operations approximately 20 to 30 individuals will be needed for drilling the shot holes and laying geophones, and another 50 to 60 individuals will be required during recording. The EA acknowledges that geophysical operations would occur during antelope hunting and that hunters in the vicinity of geophysical operations could be slightly inconvenienced.

This betrays your commitment to study this area as a BLM wilderness as directed by Congress. Given that part of the area involved is a WSA requires an EIS before this project can take place. Failure to do an EIS opens the door to have the project stopped by litigation. You should consider the Citizens' Adobe Town Wilderness Proposal. The area contains unique and remarkable resources including desert landscapes and wildlife. The Museum of Natural History (New York) has identified portions of the area [BLM does not identify specific locations] as one of the four most important fossil collecting locations in the US. Authorizing this project in an area that has been considered as a national park is a sharp stick in the eye to the people of the Wyoming and the US.

Actions proposed in WSAs do not necessarily require an EIS. Analysis of wilderness proposals normally requires completion of an EIS in accordance with Department Manual 516, Appendix 5, Section 5.3, Actions Normally Requiring Preparation of an EIS. As stated in item 19 (Proposed Action, other commented measures) of the EA, the proponent has contracted with a BLM-permitted paleontologist to map all known paleontological sites located on public lands. All known sites will be avoided during operations. In the unlikely event that the proponent wanted to change their operations to include activities such as road construction or ground excavation of any type, a field survey would be required prior to surface disturbance. Appropriate measures would be taken at that time to protect the resource. Thus, there will be no impact to paleontological resources. Please see response to comment #1.

6. Tom Clayson

RME Petroleum, a subsidiary of Anadarko Petroleum Corporation, owns a considerable portion of the minerals located in the proposed exploration area and the proposed project will affect RME and its interests in the area. Acquisition of subsurface data through 3D seismic technology will positively affect management of the nation's mineral and biologic resources as well as those of the intermingled non-federal lands. The project is a first step toward industry's ever increasing ability to reduce its footprint on the ground. Using 3D technology results in a thorough understanding of the subsurface in a minimally invasive manner.

With data obtained from the project, operators can better determine those locations where not to drill and often leads to a reduction in the overall cost and surface impact of a drilling program. Reduced costs will foster affordable and reliable energy for our nation, while imparting minimal impact to the environment. Overall, public land will benefit due to the high potential for less surface disturbance to occur.

BLM Manual 3130, Onshore Oil and Gas Geophysical Exploration Surface Management Requirements, provides that geophysical exploration by helicopter or other means not requiring road construction may be authorized in a WSA if it satisfies the non-impairment criteria. The 3D survey meets the non-impairment criteria for the following reasons:

- Temporary presence in the WSA and no new surface disturbance will occur;
- Operations inside the WSA will occur on foot and only consist of placing geophones and cables on the surface;
- Impacts will no more damaging than that inflicted by recreational use of the land;
- Compaction of soils or vegetation in the WSA will not occur, thereby negating the need for any reclamation;
- When 3D activity is completed, the area will remain suitable for wilderness designation by the US Congress should they decide that wilderness management is appropriate for the area.

RME has concerns with the mitigation measure on page 7, item 20 (avoidance of Overland Trail, no shot holes allowed within 300 feet of trail, no visual disturbance the trail corridor, and crossing the trail in disturbed areas only). RME understands the conflicts between cultural resources and other resource uses require resolution. Nevertheless, we believe that federal mitigation measures for the Overland Trail should not be applied to non-federal lands. RME view conflicts over resource use and impacts to the Overland Trail on non-federal lands as civil matters between the [private] landowner and operator.

RME believes that a finding of no significant impact for the Haystack/Monument Valley Geophysical Project EA is supportable and urges timely action on the project.

Thank you for your comments. The Overland Trail (48SW1226) as a general historic property has been determined to be eligible for inclusion in the National Register of Historic Places in previous consultation between the BLM and the Wyoming State Historic Preservation Officer (W-SHPO). However, specific places along the Overland Trail may ultimately be determined to be eligible or not eligible during future consultation efforts with the W-SHPO. BLM, in the GRRMP has determined that avoiding effects to the Overland Trail by not allowing shot holes within 300 feet of the trail is an appropriate mitigation measure given the trails historical nature and likely NRHP eligibility of any given segment of trail.

Since the geophysical project is a federally permitted undertaking, it is covered by regulations governing implementation of the National Historic Preservation Act (especially Section 106 of 36 CFR 800). Pursuant to Section 106 of 36 CFR 800, potential effects to all NRHP eligible or potentially eligible historic properties must be taken into account by the BLM when permitting any federal undertaking. In other words, the BLM

must consult with the W-SHPO concerning eligibility and effects of the undertaking upon NRHP eligible properties whether they be on private or federal lands. In order to expedite processing of the Notice of Intent for this project the BLM applied the same avoidance stipulations it applies to protect the Overland Trail on federal lands to portions of the trail on private lands.

The private landowners are free to deny application of this stipulation on the trail on their lands. Refusal to allow this protective stipulation would cause the BLM to consult with the W-SHPO acknowledging the potential for an *adverse effect* to occur to the Overland Trail on private lands as a result of permitting the federal undertaking. This option is entirely up to the private landowners involved; however, a determination of "adverse effect" would trigger a much extended consultation effort, possibly involving the Advisory Council on Historic Preservation and obviously would greatly delay implementation of the project.

7. *Michael Evans*

Based on the reports that have been in the Rawlins newspapers and on the radio. You are considering the possibility of allowing seismic exploration in the Adobe Town WSA. If you are going to honor the status of any WSA, you cannot allow motorized vehicles. Otherwise, the BLM are admitting you will next permit oil and gas drilling and simply ignore and destroy the wilderness attributes of the area. I know of no place whether there has seen recent seismic exploration and that drilling is not planned or already taking place.

In the past several years, I have seen the Powder Rim and all the country north to the Haystacks repeatedly "explored" by countless surveys and the thumper buggies. These project have left tracks everywhere you can ride a horses and thousands of yards of fluorescent tape. Three weeks ago from the north slope of Powder Rim in the dark of night, you could see the lights of at least 10 drill rigs, except in the area of Adobe Town. In the light there are constantly dust trails as vehicles roar up and down roads that were not even there five years ago. All of this commencing before the so-called energy crisis we are suppose to be having today. I know you are under great pressure from your agency's leaders and the current administration's energy plan to open up all potential oil and gas areas to drilling. Please respect WSAs. You and the oil companies can explore, drill, and trespass 90% of Wyoming now and if there is any potential, somebody will for very short term gain. Please protect the Adobe Town WSA. The whole area is still wild and supports all the wildlife it did when Butch Cassidy and his pals rode through there. It deserves recognition and protection of wilderness status.

Thank you for your comments. BLM must manage WSAs and all public lands in accordance with the mandates of Congress. As stated in BLM's response to comment letter #1, while Congress precluded further oil and gas leasing in WSAs (Adobe Town contains existing oil and gas leases), it did allow for mineral exploration via geophysical operations within WSAs as long as it meets the non-impairment criteria. Hand-laying geophones to record seismic sound waves is considered a non-impairing activity. No vehicles will be used in the WSA and no natural gas or oil wells are proposed to be drilled in the WSA. Approximately 50 percent of the project area was analyzed and approved for oil and gas exploration and development in the Continental Divide/Wamsutter Natural Gas Project. Part of that analysis included transportation planning and road maintenance including dust abatement. We have notified the Rawlins Field Office of your concerns about dust.

8. *Leo and Rosemary Benson*

Read about the project in the Casper Star-Tribune and learned that BLM received a citizen proposal from conservationists and that the document contains more than 950 pages of documentation. We understand that

the Adobe Town WSA contains 85,710 acres, the document includes evidence that it should have been and still could be expanded to twice the size or more. It is possible that errors of omission were made back in the 1970s when BLM inventoried these lands. The wilderness proposal deserves a thorough inspection before you start in motion any activity that might develop an unstoppable momentum of its own. We read that the minerals industry won't bother to disturb the area at all if seismic mapping finds little promise of oil or gas. The article didn't mention what would happen if oil and gas is indicated. We know it would likely resemble what is happening all over in Sublette County. Perhaps you would hear that many wells could be developed from 1 pad, then later hear that oops, that wouldn't be economical. And all the roads and pipelines would adversely affect wildlife. If you were to reaffirm your directive to maintain the wilderness aspect of the WSA for now and in your mandate managed public land for its highest use, there would always be chances in the future to request again the opportunity to explore and to develop what might be found. You must work to enlarge the current WSA. Oil and gas won't go away and the future owners of public land will have the opportunity to prioritize the treasures of their land. A majority could always reconsider and decide against wilderness as the best use of these lands or they might instead applaud and retain wilderness protection if you work for it now. At least they would have a choice. Start development with an EIS, the area is too important to be changed forever because of negligence.

Thank you for your comments. The proposed geophysical project will not adversely affect potential wilderness characteristics, should they be identified, and therefore would not disqualify the area from further consideration as a WSA.

9. Bill Phelps

Wyoming's greatest economic asset is not energy sales. In the future, wild land will be the greatest economic boom. The continuous population increases projected of the next 50 years will eventually use up the scant energy supplies we can find as we must also eventually find more efficient technology to consume less energy. Once we develop wild land, it is gone forever. No efficient technology can bring it back. Please preserve the wild land that remains in your corner of Wyoming, especially the Adobe Town WSA.

Thank you for your comments. Please see BLM's response to comment letter #8.

10. Marvin Brittenham, Flying J Oil & Gas

Flying J Oil & Gas supports the acquisition of the Haystacks geophysical project as proposed by Veritas. Seismic data gathered in areas such as this helps properly locate exploration wells thereby minimizing the surface disturbance and impacts otherwise caused by drilling exploratory wells. Surveys with 3D seismic data also further enhance the potential for eliminating unnecessary development wells and their associated impacts. The Washakie Basin has a tremendous resource base of clean burning natural gas to help fuel our Nation and the data gathered from this survey is crucial in the exploration efforts of our extraction industry.

Thank you for your comments.

11. Duane Keown, Katherine Fitch

Writing regarding the lack of an EIS concerning the Adobe Town WSA and possible impact prior to the Varas [sic] Haystack Seismic Exploration Project. I understand that this exploration will be within the Adobe Town WSA. You have protected and preserved this area as a possible wilderness area and now you are preparing to risk its wilderness character for oil exploration. Exploration with seismograph risks the

potential for designated wilderness area of course if the exploration finds good probability of oil or gas. drilling will take place and the land's wilderness designation potential will forever be lost, especially if oil or gas is found in an amount that is profitable.

Even more shortsighted is the sacrifice of this land's wildness in view of the longevity of fossil fuel as our primary source of energy. The best estimates even by the oil companies do not give oil and gas 100 years as our primary source of energy for transportation and heating. Of the industrial and developed nations, only the US is projected to double in population in the next 100 years, primarily from immigration. The best use of this land for the next 100 years is no use at all.

Like to add another version of our energy use and production in the near future, one that public land managers would do well to consider. It certainly is not the vision for public land and energy needs held by the current administrations, federal or state. This description of a conservation path for energy production and use was published as a guest editorial I wrote for the Casper Star Tribune May 27, 2001 under the title "Burning Issues." Adobe Town Wilderness can be serving the 500 million Americans in 100 years and for posterity. If it is opened to oil exploration now, 100 years the fossil fuel it contains will have contributed to the carbon dioxide increase in the atmosphere and the wildness character of the land will have been sacrificed. Probably 100 years hydrogen will be our primary fuel. The earth's fossil fuel remaining will have uses of higher priority than to be burned as energy.

Thank you for your comments. Please see BLM's response to comment letters #1 and #8. No exploratory wells for oil or gas are proposed within the Adobe Town WSA.

12. Jason and Linda Lillegraven, William and Jane, Bigler.

Wyoming has vast areas that are unique. These areas serve as refuges for the full range of native biota and provide attraction for the human citizenry who wish to experience ecosystems that elsewhere are becoming restricted essentially to the point of loss. Adobe Town gained its name because of the pale rocks, when viewed from a distance, look like scattered ruins of Mexican desert villages. The badlands landscape becomes ever more spectacular as one actually enters the Adobe Town. The area is relatively unspoiled, with a minimum of existing roads and a maximum of natural quiet and peace and endemic life-forms. There exists no more remote area in all of Wyoming, and its environmental fragility is extreme. The general vicinity of the Adobe Town that was considered for national park status and is presently is an official BLM WSA. Adjacent areas to the WSA represent part of the citizen's proposed wilderness. Although the WSA is official for your agency, the existence of the latter has not yet been acknowledged by BLM.

What would justify BLM to allow active energy exploration (using off-road motorized vehicles) within a WSA prior to satisfactory completing an EIS? BLM is not mandated to put the economics of energy development above intangible values of preserved lands. At the very least, the process of study of environmental impacts should proceed to completion prior to allowing trespass upon these public lands of oil and gas corporate interest. The citizen's proposed wilderness should be acknowledged by BLM as being relevant to considerations of this WSA.

Thank you for your comments. Please see BLM's response to comment letters #1 and #8.

13. Jerry Devin

In my visits to the Red Desert, I have observed many wells being drilled and gas wells that have been completed. I have seen antelope laying o the completed wells and grazing closely to wells being completed. I feel with proper safeguards and following environmental policies already in place, this area can be explored and drilled for production value oil and gas without harming the environment. I have seen restored areas where coal was previously mined and those areas all had more vegetation and better vegetation than the adjacent, untouched areas. I agree with BLM, giving preliminary authorization for exploration of this area as long as all appropriate environmental safeguards are followed.

Thank you for your comments.

14. Darrell Gillen, Williams Energy Services

William Energy Services supports the Haystacks 3D geophysical project as proposed by Veritas. Seismic information gathered on 3D projects, such as the Haystacks, allows companies the opportunity to eliminate exploratory wells. The geophysical data gathered with these types of 3D projects is crucial in the exploration effort required in drilling successful wells.

Thank you for your comments.

15. Rick Obee, CPC Energy

Energy demand for our country has continued to expand and that the supply and demand concerns which have been exhibited in California are only a snapshot of the problem. All forecasts that I have seen predict a continued increase in energy demand by the US public. Californians have stated the cost of energy must be kept low and that requires the energy industry to utilized efficient, innovative, and cost efficient means to locate and develop the needed fuels to generate this energy. Three-D seismic surveys are efficient and are designed to aid in defining the hydrocarbon accumulation which fuel our domestic energy needs. Geophysical data will be used for years to come to define and refine drilling locations for oil and gas wells. I share concerns for the environment and believe the use of advanced technologies to more successfully locate and refine locations for hydrocarbon is positive for the environment.

Thank you for your comments.

16. Wendy Keefover-Ring, SINAPU (Southern Rockies Carnivore Restoration Project)

The discussion and mitigation measures in the EA are woefully inadequate to handle the kind of damage that oil and gas exploration, drilling, and other activities proposed for these federal lands. These harmful activities will occur in wilderness-quality lands which have been identified by citizen's groups, located adjacent to the Adobe Town WSA. The damage to lands, cultural artifacts, water, and wildlife have not been adequately analyzed in any meaningful way and yet, it appears that the BLM is willing to move forward with the project.

Geophysical operations are not equal to nor the same as oil and gas exploration wells where roads, wellpads, and associated facilities are required. Geophysical operations entail drilling a small (3½ to 4½-inch) hole 60 feet deep, placing low-level explosive material, and repacking the hole with the drill cuttings. No disturbance is needed other than the hole.

We provide a few examples to illustrate some of the inadequacies of the EA. The EA only give big game an abbreviated season on "crucial...winter range" from only mid-November until April 30th. Getting adequate forage and browse in the wintertime is fundamental to the survival of big game species. Stressing animals with auditory and visual stimuli will ensure that animals will spend their precious energy budgets fleeing instead of foraging which may result in a decrease in the herd's fitness.

The commenter misunderstands the purpose of the crucial winter stipulation. Veritas is planning on completing their geophysical operations before November 15 when BLM stipulations for protection of crucial winter range apply. Should Veritas not complete their operations by November 15, then the stipulation to protect such ranges would apply. Crucial winter ranges for mule deer and pronghorn antelope occupy only a small portion of the project area.

Impacts to rare fauna including swift fox, ferruginous hawk, burrowing owl, greater sage grouse, mountain plover, black-footed ferrets, the Great Basin gopher snake, and the midget faded rattlesnake are either not discussed in any meaningful way nor are mitigation measures adequately addressed in this plan. The proposed oil and gas activities ensure these sensitive species, threatened, or endangered species decline.

BLM has considered all special status species potentially affected by the proposed geophysical operations. Some of the mentioned species do not inhabit the area and the hole density in prairie dog towns or complexes found in the area do not meet the criteria developed by the U.S. Fish and Wildlife Service for black-footed ferret habitat. Thus, species that do not inhabit the area are not affected by the action. For other special status (sensitive) species, important life events (e.g., rearing young) have been completed for the season. The great-basin gopher snake (*Pituophis melanoleucus deserticola*) is very uncommon in the Haystacks area. During summer this species seeks subterranean habitats to avoid desiccation and to seek food. Shothole seismograph activities should not adversely affect this species. Veritas has been instructed to advise their field crews that reptiles are not to be harmed or destroyed within the project area. The midget faded rattlesnake (*Crotalus viridis concolor*) does not occur in the project area. The uncommon rattlesnake found on the southern two-thirds of the project is the prairie rattlesnake (*Crotalus viridis viridis*). Therefore, the impact of conducting geophysical operations is not likely to have an adverse effect on these species or lead to the listing of sensitive species that inhabit the area.

BLM has failed to show how monitoring and compliance for the protection of water resources and riparian areas will occur. How will BLM prevent silting and erosion. What mitigation measures will be in place where vegetation grows slowly? Will Veritas replant and water vegetation. Or will it extract what it needs leaving the landscape scarred and poisoned. The EA does little to assure that Veritas will comply with environmental laws, let alone BLM regulations.

Veritas voluntarily committed to use heliportable drills on approximately 20 percent of the project. Although expensive, it precludes vehicles from the Haystacks and adjoining badlands which reduces erosion and human-made scars. The project proponent contracted a geologist/hydrologist to review geologic literature and apply hydrologic criteria to protect seeps and springs in the project. Field surveys for spring and seeps identified 11 small water sources in and on the Haystacks. An elliptic circle was drawn upslope from each seep to provide about 1/4 mile protection from the shothole. Adverse effects to water sources from the Haystacks project would be negligible.

The discussion for the protection of and mitigation for cultural and historical artifacts is inadequate. BLM has neither catalogued nor inventoried what artifacts lie above the surface and it hopes that Veritas will

notice BLM permitted Archeologist's flags or marker and avoid crushing or otherwise destroying irreplaceable relics.

A Class I literature review and Class III on-the-ground cultural resources inventory was performed on all federal lands involved in the project area, and a Class I literature review was performed on all private lands. All eligible or unevaluated historic properties on both federal and private lands will be avoided by modification of the geophysical plan of operation to provide for all vehicle traffic to drive around those locations. No shotholes will occur on any eligible or unevaluated historic property identified in the literature search or the Class III inventory, or in the case of private lands in the Class I literature review.

The determination as to whether or not to require a Class III level inventory on private lands is made by the Field Manager following receipt of information from the Class I literature review on both federal and private lands. The private landowners are also consulted regarding whether or not they would prefer to have an on-the-ground inventory done on their lands and their comments are taken into consideration when the Field Manager makes his determination.

Factors that would likely trigger the BLM requirement for an on-the-ground inventory on private lands are:

1. The request of private landowners to have such an inventory done on their lands.
2. A much higher than normal density of historic properties (regardless of eligibility determination) in any or all of the project area. Normal site density (from the GRRMP) is generally considered to be six (6) to eight (8) sites per section, or per 640-acre tract.
3. A high potential for especially sensitive site types such as human burials and/or other sites of concern to Native Americans.
4. Knowledge of any eligible historic property or property type that would be especially vulnerable to effects that could occur from this specific type of undertaking whether that property is on federal or private land.

In the case of the Veritas Haystacks 3D Project, none of these factors were involved. The private landowners specifically requested that no Class III on-the-ground inventory be conducted on their private lands. After taking these factors into account, the Field Manager made the determination that the Class I literature search on private lands would adequately meet BLM obligations for private lands under the National Historic Preservation Act.

A full EIS is clearly warranted because of the number of sensitive or rare flora and fauna that inhabit Adobe Town WSA and the wilderness qualities of lands nearby. The EIS must expand the scope of now identified, like whether Adobe Town WSA and adjacent lands are a potential dispersal corridor for species, including canis lupis. We can not know what impacts this project will have on historical artifacts and relics because no inventory has been disclosed by the EA. BLM must work with professional archeologists to determine what historical resources it may forever lose if those items are not catalogued and provided adequate protection. We request a full EIS to take into account Biodiversity's wilderness proposal.

BLM disagrees with the commenter's claim that an EIS is necessary due to the number of sensitive or rare flora and fauna that inhabit Adobe Town WSA. Wildlife and plant species habitat found within the Adobe Town WSA are also found outside the WSA. The conclusions reached in the EA are valid. Other measures

are in place to protect big game habitat, raptor nesting habitat, and greater sage grouse and mountain plover nesting habitat. No impacts are expected to these species since the proposed geophysical operations will be outside the time frames important for the rearing of young. No gray wolves inhabit the project area.

The commenter fails to acknowledge the private lands and more importantly the private land and/or mineral owner wishes for the use and enjoyment of their private lands. "A Citizens' Wilderness Inventory of Adobe Town" (Biodiversity, et al.) shall be reviewed and field checked as time and workload allow. Since seismic activity proposed in this EA will not affect wilderness characteristics, further review is not immediate in relation to the proposed action.

17. *Dru Bower, Petroleum Association of Wyoming (PAW)*

Veritas has agreed to numerous committed measures which go beyond the required protective measures established in the current land use management plan. They have demonstrated their willingness to work with BLM in protecting the environment. PAW believes the project is mitigated to insignificance. These applicant committed measures are voluntary action agreed to by Veritas and should not establish precedent for future similar projects. Currently, Veritas is bound by the mitigation measures in the land use plan along with existing terms, conditions, and lease stipulations. Mandatory mitigation in effect is more than adequate to protect resources. There is minimal surface disturbance proposed and no significance criteria is exceeded to indicate that an EIS is necessary. Specific comments include:

BLM has worked diligently with Veritas to assure that all resources are protected. All committed measures are voluntary on their part.

Page 12, Monument Valley Management Area. The nature of 3D seismic activity will not change the VRM classification and not have an adverse impact on the viewshed.

Thank you for your comment.

Page 12, Manage WSA's as Class I viewshed. Veritas is not proposing to drill any shot holes in the WSA, only hand lay geophones on the surface and use of a helicopter to transport personnel and equipment. There will be no surface disturbance or change to the VRM status; therefore, no adverse impact will occur within the WSA.

Thank you for your comment.

"Wyoming Statewide Wilderness Study Report, Wilderness Study Areas Specific Recommendations" (Sept. 1991) states that of the 85,710 acres of BLM land in the Adobe Town WSA, the report recommended that only 10,920 acres be recommended as wilderness and that 74,790 acres be released from designation. Because Congress has not made a final determination regarding wilderness, BLM continues to manage the entire WSA as wilderness. The proposed action does not impact the 10,920 acres recommended for wilderness. It affects only a small portion of the acreage BLM recommended to be released from wilderness designation. There are valid existing rights that must be honored and the project should not be delayed based on concerns regarding impacts in the WSA as no adverse impacts will occur.

Although BLM recommended 10,920 acres for wilderness designation in the Adobe Town WSA, Congress will be ultimately responsible for determining whether the area will be designated as wilderness and if so, how many acres the wilderness area will encompass.

Page 15, paragraph 4, Overland Trail will be avoided regardless of land ownership. PAW strongly opposes BLM's mitigation regarding surface disturbance on private property. Unless BLM or the applicant has received permission from the landowner to mitigate impacts on private property, this language should be removed.

Veritas has agreed as part of their proposed action to avoid the Overland Trail regardless of land ownership. It is voluntary on their part and BLM is grateful that Veritas has been willing to work with BLM to protect resources found in the area.

On page 7, BLM states "in no case would there be any visual disturbance to the trail corridor." While the Overland Trail is protected in the RMP with a "1/4 mile or visual horizon, whichever is less," it is not a Congressionally designated historic trail. According to the BLM Wyoming State Office, only congressionally designated historic trails will be subject to a viewshed analysis, but there is no discussion as to the protection of a corridor for this trail. PAW opposes additional protective measures for the Overland Trail that are not reflected in the RMP. The project will not directly effect the trail and 3D seismic will not effect the viewshed from the trail within the 1/4 mile restriction. No adverse impacts directly effecting the trail will occur.

The Overland Trail is not a Congressionally designated trail. Veritas has voluntarily agreed to avoid the trail corridor regardless of surface ownership and is aware of the 0.25 mile RMP requirement.

Page 18, Wildlife. Three-D seismic is to the oil and gas industry as a cat-scan is to the medical profession. It is quick and painless way to avoid unnecessary and intrusive exploratory surgery. A detailed image of the subsurface that 3D provides allows the operator to target the most promising areas while avoiding areas that would otherwise require exploratory drilling, which must be analyzed as an alternative to seismic activity. This technology is short term, temporary disturbance, and does not require the construction of surface facilities or roads. Impacts to vegetation and soils is temporary and will be eliminated after 1 growing season. The short term and disperse nature of the 3-D seismic and its minimal need for vehicles will not create a significant impact.

Thank you for your comment.

Socio-economics was not addressed in the EA and PAW believes that an analysis should be included. While the proposed action may not stimulate tremendous growth in the economy, residents of Wyoming and the participating counties will benefit by directly creating new jobs and additional revenue if further development is determined to be economically feasible after the exploratory project is completed. PAW believe that this project creates minimal disturbance to the environment and has been mitigated to insignificance. PAW supports the proposed action with modifications.

Drilling of oil and gas wells is not dependent upon geophysical operations and future social or economic impacts cannot be determined at this stage. If the data shows that there are commercial quantities of energy and if the private and/or federal lessees want to develop the resource, socio-economic impacts would be analyzed at the time of proposed development. Approximately 50 percent of the geophysical project has already been analyzed, including social and economic impacts, in the Continental Divide/Wamsutter II Natural Gas Project EIS. Another portion of the project area is currently being analyzed in the Desolation Flats Natural Gas Project but the EIS is not ready for public release.

18. Carol Kruse, State of Wyoming Office of Federal Land Policy

We have several concerns regarding the distribution of the document. We did not receive the EA until August 1 and comments were due to BLM by August 20th. State agencies need a minimum of 30 days to review documents. It is also of concern that the project was allowed to proceed before an EIS and NEPA comment period were completed.

The public comment period reflected deadlines for completion of the geophysical project prior to winter wildlife restrictions. BLM has not allowed geophysical operations to occur on public lands; no such activity would be allowed on public lands until the permit is approved. An EA has been prepared for this proposal which concluded that there are no significant impacts; therefore, preparation of an EIS is not necessary.

There is no quantification of acreage to be disturbed and no indication of how long "temporary" might be regarding impacts and disturbances to visual, vegetative, and wildlife resources. Neither is there detailed discussion of what type and duration of disturbance might occur for area users, such as hunters and ORV riders. It is difficult to determine how BLM arrived at repeated conclusions that impacts can be mitigated to a non-significant level. We saw no cumulative impact discussion from this plus other concurrent or reasonable foreseeable project such as the Continental Divide/Wamsutter II development.

As explained in the EA (see Proposed Action), no surface disturbance is required other than the 3½ to 4½-inch drill hole which is drilled to a 60-foot depth, packed with low-level explosive, and then repacked with the drill cuttings. The end result is there is no surface disturbance associated with this geophysical project and once the hole is drilled and repacked with the cuttings, there is no further impact to the area where the hole was drilled. Once all the shotholes have been drilled and repacked, geophones are set out to record the sound waves produced as the explosive material at each shothole is detonated. After the shotholes are detonated, the geophones are picked up and any flagging or other material is removed and the project is completed. If reclaimed areas (e.g., reclaimed roads) are disturbed due to rutting, the proponent is required to reseed the ruts. Geophysical operations would likely be conducted during hunting season and those hunters within the immediate area of operations could be slightly inconvenienced. Cumulative impacts were addressed with each resource. With the exception of the potential for future exploratory or development wells (the number of which is unknown), no cumulative impacts are expected to other resource values due to geophysical operations. It is likely that unnecessary exploratory wells would be drilled if geophysical operations are denied (p. 19, EA).

Given the less than optimal condition of both big game and their forage due to our recent drought, Veritas is encouraged to complete the operation, at least within crucial winter ranges, prior to seasonal occupation of those ranges. Please note Wyoming Game and Fish's safety recommendation that workers wear hunter orange should the project not be completed prior to hunting season.

BLM has added a measure to encourage Veritas to protect worker safety as most likely, operations will occur during the hunting season.

We acknowledge the need for 3D exploration in this high natural gas potential area. Such images will provide valuable knowledge of the extent and location of reserves, and the economic and technical feasibility of recovery.

Thank you for your comment.

19. Lance Cook, Wyoming State Geological Survey

The area under consideration has an extremely high probability of occurrence of natural gas resources. Productive fields are found to the north, south, east and west of the two WSAs. The proposal lies directly in the heart of the productive Washakie Basin. Seismic surveys require recording data outside of a specific boundary and hand-laying receiver lines within the WSA does not require drilling or vibrating in the WSA. This will allow collection of vital seismic data up to the edge of the WSA. Without gathering this data, areas up to a mile away from the WSA boundary will be inadequately imaged by the seismic project resulting in a possible waste of the natural gas resource.

Thank you for your comments.

20. John Robitaille, Wyoming Business Council

The Wyoming Business Council has reviewed the EA and feels it is in Wyoming's best interest to pursue the proposed project. If seismic exploration is successful, the opportunities for further development increase dramatically. Although not addressed in the EA, benefits for Wyoming include increases in tax revenue and decreases in the jobless rate.

Thank you for your comments. Please see response to comment letter #17 with regard to socio-economic impacts.

21. Tom Collins for Bill Wickers, Wyoming Game and Fish Department

The EA notes that the disturbance of shrubs is expected, is considered a short-term disturbance, and notes the vegetation will eventually recover in a few years. Shrub recovery is dependent on several factors and in arid climates takes longer to recover than in higher precipitation areas. Older age-class shrubs that are disturbed could take 30-40 years to return to their pre-disturbance size and function. Accordingly, shrub dependant wildlife species could be affected longer than expected. Considering the size of the area and the grid spacing of the project, a large area of vegetation disturbance could be created in the short-term. We have concerns about the cumulative impacts on wildlife populations and would like to see the EA quantify the potential amount of disturbance in the project area. The cumulative impact analysis should include other adjacent activities (CD/WII project, feral horse populations, etc.).

The Haystacks project area is characterized as arid with sparse vegetation. Part of the area will be drilled with heliportable drills regardless of land status. Veritas has indicated that pickup trucks and recording trucks would primarily be restricted to existing roads and trails. Buggy drills and ATV's (used by surveyors) would be allowed off road and on shallow slopes. The shothole geophysical method would cause less crushing of vegetation than vibroseis methods; however, past experience with geophysical projects indicates that neither have created long-term adverse impacts to sagebrush or other vegetation. The only surface disturbance associated with the project is the 3½-inch to 4½-inch drill holes. Some vegetation may be crushed.

The EA has no section on upland game birds, or sage grouse in particular, but mentions that the project timing should have no impact on this species. Sage grouse have been observed in and around the project area during the late summer. Although we have no record of any sage grouse leks in the project area, if the project continues into the spring sage grouse leks searches should be done to confirm that no disturbance of this species would take place.

Sage grouse are known to inhabit about two-thirds of the project area during the spring. As water sources dry up by July, less than half of the area is suitable for use by sage grouse. During early April 2000, an early morning search for new sage grouse leks was conducted from Eagle Nest Draw through Manuel Gap. At that time no strutting grounds were located. Several early morning surveys to delineate this crucial habitat are planned during 2002; any new information would be shared with the Department. The proposed action incorporates measures to survey and protect sage grouse leks and nesting habitat (p. 6, EA). Activity is scheduled to occur between August 1 (or approval) and end by November 15. Should seismic operations be resumed in the spring (not likely as other wildlife stipulations would apply), surveys for sage grouse and other special status species would be required (p. 5, DR).

Although the operator plans to stagger vehicle use patterns to reduce vegetation disturbance, we expect new roads to be created since there are currently few roads in the area. Powder Rim had several miles of new roads created after a similar seismic operation in 2000, despite the area having a high density of road before the project. The EA should address reclamation of any new roads.

The operator has committed to stagger vehicle use patterns to minimize impacts to vegetation. Thus, no new roads will be created. Should any areas become disturbed, they would be reclaimed to the satisfaction of the BLM authorized officer.

The activity caused by this project could have a negative effect on hunters and animals during hunting seasons. Nonresidents and resident hunters spend significant amounts of money and time traveling to and within Wyoming to hunt big game. Antelope in this area are currently managed as a trophy population. Although the project is an temporary impact, the potential impacts to this recreational activity should be addressed in the EA. Ideally, the project should be completed before the hunting season or postponed while these seasons are ongoing. Because of safety is also an issue, we encourage all seismic crew members to wear hunter orange if the project continues during the hunting seasons.

Due to wildlife issues, the only time frame that geophysical operations can occur is August 1 through November 15. The EA recognized that hunters may be inconvenienced if hunting in areas where geophysical operations are occurring (p. 16). Not all of the area will have human activity on it at one time. Fourteen receiver lines of geophones will be laid at one time. After the center input line is shot, the outer geophone line is picked up by helicopter and dropped along a new line 3½ miles away. Aside from helicopter activity, two crews with ATV's will remove and reset geophones along the line. Disruptive activities on the ground should be minimal and only temporary animal displacement is anticipated. BLM added a measure to encourage Veritas to require wearing of hunter orange during the hunting seasons.

22. Jill Morrow, Wyoming Chapter Sierra Club, Barbara Rugotzke

We believe this project will not be compatible with the intent of the WSA designation. The project would authorize off road vehicles to pound the earth, destroy vegetation, create new roads, disrupt and possibly ruin habitat for wildlife and mare scenic values.

The respondent is misinformed about the proposed action. No off-road vehicles will be used in the Adobe Town WSA. The *Interim Management Policy and Guidelines for Lands Under Wilderness Review* specifically allows for geophysical operations, including the use of helicopters within WSAs if it meets the non-impairment criteria. Non-impairment means "a temporary use that does not create surface disturbance or involve permanent placement of facilities" can be allowed if such use can be easily and immediately

terminated upon wilderness designation. Hand laying geophones will not disturb the surface, trample vegetation, or otherwise detract from the wilderness characteristics found in the area.

Beyond the immediate damages expected from the exploratory project, it poses long-term threats to the wilderness values of the area. An oil and gas company is not going to invest money in exploration if the presence of oil and gas isn't likely. After exploration, oil and gas wells could soon pop up all over this pristine landscape. We urge BLM to consider Biodiversity's wilderness proposal in the Adobe Town region. We believe the area "as is" is worth more than the oil and gas it may yield. We remind BLM of its commitment to protect the WSA, not exploit and destroy these fragile lands.

As stated before, much of the geophysical project area lies in checkerboard lands where every other section is privately owned. Approximately 50 percent of the area has already been analyzed and approved for oil and gas development in the Continental Divide/Wamsutter II project and another portion of the project area is under analysis for oil and gas development in the Desolation Flats EIS. Geophysical operations also provide information on where not to drill exploratory wells, thereby eliminating unnecessary surface disturbance. Also see response to comment letter #16, last paragraph.

We urge BLM to undertake an EIS to determine how this proposed action will impact the environment. Law requires an EIS whenever impacts may significantly harm the environment as this project surely will. An EA is not sufficient for the scope of harm this exploration project will have. The EIS must study what will happen to the many vulnerable or rare animals and plants in the area (midget faded rattlesnake, black-footed ferret, Great Basin gopher snake). The EIS must address the effects of oil and gas exploration on the other wildlife species that call the area home, mountain lions, ferruginous hawks, black-tailed prairie dogs, wild horses, and burrowing owls. A full scale EIS would determine how the regions wilderness values and natural character would be affected. It is extremely important that this beautiful area receive full consideration for its irreplaceable values and wildness. It would be a travesty for oil and gas exploration to destroy its wildlife and wild character for short-term gains.

Please see BLM response to comments #5 and #16.

23. *Mike Long, U.S. Fish and Wildlife Service*

The EA does not provide sufficient information for the Service to concur with determination that this project is not likely to adversely effect any species listed under the Endangered Species Act of 1973, as amended. We request the following information in the form of a biological assessment.

Based on coordination with your staff, the following response has been submitted to your office. It is our understanding that a letter of concurrence will be forthcoming.

Blowout Penstemon. The EA states no listed plant species are present within the project area, but does not provide the survey information used to arrive at that determination. Given the presence of suitable habitat for the endangered blowout penstemon, we request the survey results for this species. If blowout penstemon is present, the Bureau should prohibit seismic activities in those areas.

Information for potential plant species was derived from the Wyoming Natural Diversity Database (WYNDD). According to their information, Blowout penstemon grows in "wind-carved depressions in sparsely vegetated active sand dunes." They also report that "*Penstemon haydenii* is absent from gently undulating dune fields that are not associated with steep mountain slopes or rocky ridges." It is found in

Wyoming south of the Ferris Mountains, around 60 miles away. Steep, blowing slopes with sparse vegetation are not present in the Haystacks Project area. During the BLM botanist's field survey of the area, no habitat was found for the species and no plants were detected.

Black-Footed Ferret. The EA does not identify if the seven white-tailed prairie dog towns within the project area are part of a larger complex of prairie dogs. If these towns are part of a larger complex which contains suitable habitat for the black-footed ferret (200 total acres of prairie dogs with a density of 8 burrows per acre), then black-footed ferret surveys in these towns may be necessary. We request information which describes the prairie dog complex, and whether or not that complex has sufficient size and burrow density to support ferrets. Alternatively, these towns, along with a buffer sufficient to prevent collapse of underground burrows from the shot blast, can be excluded from the seismic activity, or black-footed ferret surveys can be conducted prior to seismic activity in these towns.

Of the seven identified white-tailed prairie dog towns found within the project area, two are on private land, two extend across both private and public, and the other three are entirely on public land. Hole densities range between 3 and 7 holes per acre. These prairie dog towns do not constitute a complex because they are disjunct and are not part of a larger prairie dog complex.

Two and three miles north of the Haystacks are two prairie dog colonies which are about 3/4 mile apart. Each colony is twelve acres or less. Hole density averages are less than seven holes per acre.

A third colony of 27 holes covers about 12 acres and is just off the east side of the Haystacks and averages seven holes per acre. The nearest known colony to this town is about three miles farther east, near Mulligan Draw and outside the project area.

A fourth prairie dog colony is about four miles southwest, with 14 to 16 burrows on one side of a low ridge and 20 to 30 additional burrows on the other side of the ridge, with an average hole density of five holes per acre.

Another three colonies are mostly within the Adobe Town WSA. They may really be considered a single colony as the holes are widely dispersed, with some holes on saltbush flats and some holes on the sides of stable sand dunes. Hole densities are four to five holes per acre or less and the total surface area is less than 95 acres. Neither geophysical shot charges nor vehicle activity would occur in this area.

Based upon past experience with 2-D shot hole geophysical surveys, we are unaware of burrow damage or collapse during or after shot detonation. The 15-pound detagel charge is placed 60 feet into the hole and cuttings backfilled to the surface to prevent blowout and drive the shock wave downward.

Mountain Plover. The mountain plover is proposed for listing under the Act. However, this species was not discussed in either the threatened or endangered species, or special species status sections in the EA despite the presence of suitable habitat (page 13). Although the Bureau has determined there will be no impact to nesting mountain plovers because of project timing, the Service cannot concur with this determination, because the project timing was not identified in the EA. We recommend the Bureau determine whether the project may affect the mountain plover. Regulations at 50 CFR 402.10 allow for conferencing with the Service on any action that is likely to jeopardize the continued existence of any proposed species. We request the Bureau provide this office with information regarding timing of the proposed action along with measures which would minimize impacts to the mountain plover should the project occur between April 10

and July 10. Additionally, we wish to remind the Bureau that the mountain plover is currently protected under the Migratory Bird Treaty Act (MBTA).

BLM has corrected the text to include a discussion under the Threatened and Endangered Species sections found in both the Affected Environment and Environmental Consequences/Impacts (see Appendix A of the DR, Errata). As stated under the proposed action, geophysical operations are scheduled to be conducted in the late summer and fall of 2001 (year corrected in Errata) with the project scheduled to be completed by November 15.

Several patches of suitable plover habitat were identified on the north side of the Haystacks on both private and public land. A BLM biologist conducted inventories in late May and early June of this habitat and did not locate any mountain plover. South of the Haystacks in Adobe Town is considerable habitat suitable for mountain plover. Representative samples of these habitats were driven through and given considerable viewing time with a spotting scope and no plovers were found. Since the allowable window for conducting 3-D geophysical operations within the project area is August 1 through November 15, adverse impacts to mountain plover are unlikely. Appropriate surveys for mountain plover (and other species) would be required before operations could resume if the project is not completed by November 15.

Yellow-billed Cuckoo. On July 25, 2001, a distinct population segment of the yellow-billed cuckoo was designated as a candidate species for listing under the Act. This distinct population segment includes the project area. The information presented in Attachment 2 (page 2-2) regarding this species, status is incorrect.

The EA was released July 26, 2001. We have modified the text of the EA (see Errata) to address the yellow-billed cuckoo.

The only riparian habitats found within the project area are around several seeps and springs on the south side of the Haystacks. Vegetation associated with this water consists of Nebraska sedge, rushes, and several forb species. Two of the springs provide water for limber pine. A semi-riparian habitat area formed from an annual snow cornice is located on the east side of the Haystacks. Juniper, narrowleaf cottonwood, coyote willow, and limber pine are found on this two-acre parcel. No suitable habitat for the yellow-billed cuckoo has been identified within the geophysical project area and sightings of this species have not been recorded. The species' status shown on Attachment 2 (page 2-2) will be corrected.

Interrelated and Interdependent Effects. Of the 133 square miles within the project area, 82 square miles are Bureau lands. The ownership of the remaining surface is not identified. Under the Act, the Bureau is responsible for evaluating all potential impacts to listed species (on) private and State lands within the project area. If seismic activity on State and private lands within the project area would not occur, be feasible, or would occur to a lesser extent without exploration on Federal lands, the impacts to threatened and endangered species on the non-Federal lands must be considered an interrelated and interdependent effect.

BLM has considered the potential impacts to listed, proposed for listing, and candidate species on all lands regardless of ownership. Wildlife and plant inventories, prior to and including the year 2001, were conducted on all lands within the project. Specific inventories for listed threatened, endangered, and candidate plants and wildlife were conducted in the Adobe Town area since 1981 and none of the designated species were located.

The project area including the Haystacks has been inventoried for raptor nesting since 1978, with re-inventory work conducted about every four years. The entire area, regardless of land status, was inventoried for raptor nest sites during spring 2001. Golden eagle, ferruginous hawk, red-tailed hawk, and burrowing owl were located. The Timing Limitation Stipulation (TLS) provides protection during nesting and fledging of these raptor species. The burrowing owl occupies habitat within the WSA where only geophone laying activity is permitted and thus will not be affected.

Wildlife and habitat inventories for the Haystacks Project indicate that no (listed or proposed) threatened, endangered or candidate plant or wildlife are present and are not likely to be adversely affected by the proposed geophysical project. Therefore, the BLM affirms the "no effect" determination. Until there is plant or wildlife information indicating otherwise, preparation of a Biological Assessment for this geophysical activity is not anticipated. Burrowing owls are migratory and will likely have left the area.

24. *Mac Blewer (Wyoming Outdoor Council), Erik Molvar (Biodiversity Associates), Bart Koehler (Wilderness Support Center), Scott Groene (Greater Yellowstone Coalition), Jacob Smith (Wildlands Center For Preventing Roads), Johanna H. Wald (National Resources Defense Council), Harlin Savage (American Lands Alliance), Erin Robertson (Center for Native Ecosystems), Deborah Davidson (American Wildlands), Travis Still (Oil and Gas Accountability Project), Mary Forrester,*

The Proposed Action Threatens Big Game and Endangered Species. The EA only affords big game an abbreviated season "crucial...winter range" from mid November until April 30th. It is not clear that this window will be enough to adequately ensure the well-being of big game, especially given the drought and resulting forage loss experienced over the last two years in this state. In addition, the EA only pays lip service to the impacts the project may have on rare species such as the black-footed ferret, the swift fox, the greater sage grouse, the ferruginous hawk, the Great Basin gopher snake and the midget faded rattlesnake.

The seasonal big game winter range dates were established in agreement with the Wyoming Game and Fish Department. The BLM has established a statewide stipulation for activities within designated winter ranges from November 15 through April 30 (Appendix 7, Procedures For Processing Applications In Areas of Seasonal Restriction, Green River Resource Management Plan, Record of Decision, October 1997).

In accordance with U.S. Fish and Wildlife Service guidelines for suitable black-footed ferret habitat (prairie dog colonies of densities of 8 holes per acre or greater), no habitat suitable for the listed black-footed ferret occurs within the geophysical project area.

Swift fox, their tracks, or scat have not been observed on the Haystacks or within the project area. Given the low surface impact from shothole geophysical activity, no adverse effects to this species is anticipated.

Sage grouse have been documented on approximately two-thirds of the geophysical project. As water sources dry up during spring and early summer, some of this habitat is unoccupied from July through late fall. The proposed timing for geophysical activity is August through mid-November which may displace some birds during hunting season, but does not conflict with strutting or breeding periods for this species.

Ferruginous hawks as well as other raptors have completed nesting by August and are usually foraging more productive habitats or migrating out of the area by the time geophysical activities may commence. The geophysical proponent has agreed to avoid disturbing any raptor nest regardless of land status on which they are found.

The great-basin gopher snake (*Pituophis melanoleucus deserticola*) is very uncommon in the Haystacks area. During summer this species seeks subterranean habitats to avoid desiccation and to seek food. Shothole seismograph activities should not adversely effect this species. Veritas has been instructed to advise their field crews that reptiles are not to be harmed or destroyed within the project area. The midget faded rattlesnake (*Crotalus viridis concolor*) does not occur in the project area. The uncommon rattlesnake found on the southern two-thirds of the project is the prairie rattlesnake (*Crotalus viridis viridis*).

The Proposed Action violates established off-road vehicle policy. Off-road ATV and truck use associated with the laying of geophones and the setting of charges as outlined in the Proposed Action is not only damaging to desert shrub communities, but also violates established ORV policy for the region. The EA cites the Green River Resource Management Plan, which states, "Most of the planning area is open to consideration of geophysical activities except where off-road vehicle use or explosive charges would cause unacceptable impacts.... Geophysical activities will generally be required to conform to the off-road vehicle (ORV) designations and management area prescriptions" (emphasis added). But the proposed action does not conform with the ORV designations for the areas: The Monument Valley Management Area, covering a large proportion of the proposed project, is under consideration as an Area of Critical Environmental Concern, with proposed limitation of ORV use to designated routes. The Haystacks fall within an area nominated for wilderness. Any off-road surface disturbance in either of these two areas rises to the level of "unacceptable impacts." The BLM admits in its EA that "Off-road vehicle use designations would be exceeded on public lands within the MVMA" (at p.16). Until such time as this ACEC is fully implemented, vehicles are limited to existing roads and trails as described in the Wyoming Off-Road Vehicle Policy. In either case, the proposed seismic activity would involve driving motor vehicles in off-road and off-trail areas to lay lines and set charges, in violation of the direction provided in the RMP and the Wyoming Off-Road Vehicle Policy.

The use of geophysical vehicles in the project area does not violate the off-road vehicle policy or the off-road vehicle designations in the Green River RMP. The policy allows for authorized uses such as those associated with seismic operations. Page 4 of the EA states some of the management direction included in the Green River RMP. Additionally, the Green River RMP states: "In areas designated as either "limited" to designated roads and trails or "limited" to existing roads and trails for off-road vehicle use, motorized vehicles must stay on designated or existing roads and trails, unless allowed an exception by the authorized officer. This limitation applies to all activities involving motorized vehicles. Except for areas that are closed to off-road vehicle travel, some types of off-road motor vehicle use may be allowed by the authorized officer provided resource damage does not occur" (p. 15). The analysis in the environmental assessment for the Haystacks Geophysical Exploration Project determined that resource damage would not occur. Thus, the use of geophysical vehicles is in conformance with the guidance provided in the Green River RMP for off-road vehicle use, geophysical exploration, and the management of the Monument Valley Management Area.

The text for the discussion on page 16 has been clarified. The statement "Off-road vehicle use designations would be exceeded on public lands in the MVMA" has been removed and the following sentence added: "Additionally, the RMP recognizes that ORV use to conduct geophysical operations in areas where there are off-road vehicle use designations can be permitted following site specific analysis." Vehicles can leave buggy paths in some areas; however, those paths recover within a couple of years depending upon weather.

The Proposed Action does not set appropriate limitations on off-road travel. The EA argues that the RMP allows "site-specific authorizations for off-road vehicle use subject to appropriate limitations to protect various resources identified during the Analysis of Proposed Actions" (emphasis added). We concur with this analysis. Resources identified by BLM included wildlife, cultural, watershed, and scientific values. In

addition, most of the project area was identified by citizens' groups to possess wilderness qualities as identified in detail in the Citizens' Wilderness Inventory of Adobe Town, which was received by BLM on 7/23/01. Despite the fact that BLM has received this significant new information concerning previously undocumented wilderness resources within the proposed project area, the BLM failed to acknowledge the presence of potential wilderness in the EA. The BLM has in fact imposed appropriate limitations only within the Adobe Town WSA, which comprises a small fraction of the project area. But BLM has failed to extend these appropriate limitations to wilderness-quality lands outside the WSA identified in the Citizens' Wilderness Inventory of Adobe Town. In this failure, the BLM has proceeded in what could be argued as an arbitrary and capricious manner, withholding appropriate protections from some wilderness-quality lands while providing them to others.

The analysis in the EA documented that no long-term impacts would occur to resources in the project area. The proposed geophysical project will not adversely affect potential wilderness characteristics, should they be identified, and therefore would not disqualify the area from further consideration as a Wilderness Study Area. Similar activity has occurred in and around the project area, including portions of the area inventoried in the "Citizens' Wilderness Inventory of Adobe Town." Little or no evidence of this activity exists today.

The EA fails to accurately disclose impacts associated with 3-D seismic testing. The Veritas Haystacks EA fails to present accurate information regarding the impacts of 3-D seismic testing of the type proposed by Veritas GDC. The EA characterizes the vibrator buggies as "ATVs." Far from being one-passenger, small four-wheeled motorcycles, the vibrator buggies that form the basis of the project weigh 26 tons, and any use of such vehicles off road will create enormous impacts on desert shrub communities as well as archaeological and cultural resources. In locations where the vibrator is used, the entire 52,000-pound weight of the vehicle is brought to bear on the vibrating pad, resulting in irreversible soil compaction. There may be as many as 30 vibrator pad deployments along a given line. These vibrators are also particularly prone to hydraulic fluid leaks; the potential for toxic chemical spills has not been adequately addressed in the EA.

The shothole method, not vibroseis, will be used in this project. The drill-mounted buggies weigh less than a pickup truck and are mounted on oversized tires to dissipate compaction. In rough areas, portable drills will be transported by helicopter to avoid surface damage to steep slopes. Veritas has committed to spreading out their vehicle traffic to avoid creating permanent tracks.

The BLM has failed to consider roadless and wilderness qualities as required by FLPMA. In its Veritas Haystacks EA, the BLM has violated FLPMA and agency policy by failing to conduct and maintain an adequate and reliable inventory of roadless lands in the Adobe Town region. FLPMA requires the Secretary of the Interior to:

"prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority attention to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." 43 U.S.C. § 1711(a) (emphasis added).

For public lands administered by the BLM, the Secretary has delegated this inventory responsibility to the BLM. Roadless areas, as potential wilderness, are known to be a significant resource and to possess significant recreation, wildlife, and scenic values. See, e.g., BLM manual H-6310-1, Wilderness Inventory and Study Procedure, Section .06 (Policy), noting that Wilderness is a resource which fits within the

framework of multiple-use on the public lands. Consequently, the BLM has interpreted the FLPMA inventory provision to require the agency to:

"prepare and maintain on a continuing basis an inventory of certain public lands to determine the presence or absence of wilderness characteristics."

BLM Manual H-6310-1, Section .06A (emphasis added). The National BLM Director has also interpreted the FLPMA inventory requirement to obligate the agency to maintain a current inventory of possible roadless areas on BLM lands:

Authority for additional [roadless] inventories is provided by FLPMA in Sections 102(a)(2) and (8), 201(a), and 202(c)(4) & (9), and land use planning in Sections 202(a), (b), and 205(c). Among other things, these sections direct BLM to "preserve and protect certain public lands in their natural condition."

The proposed geophysical project will not adversely affect potential wilderness characteristics, should they be identified, and therefore would not disqualify the area from further consideration as a Wilderness Study Area. A review of the Haystack EA shows that the proposal will not degrade the potential existence of wilderness values or the roadless character cited in the "Citizens' Wilderness Inventory of Adobe Town". In regards to roadless areas, there will not be any additional roads developed as part of this project. The naturalness of the area will remain the same. Although there will be some human impacts resulting from this project, they will be substantially unnoticeable in the area as a whole and will not impact the naturalness of the area. Any solitude or primitive and unconfined types of recreation opportunities will not be changed due to this project. Any supplemental values that may exist would also not be affected (pgs. 4, 5, 17, 18 EA).

Instruction Memorandum No. 96-176 (September 6, 1996, emphasis added). Most of the roadless areas identified in the Citizens' Wilderness Inventory of Adobe Town have never been thoroughly evaluated by the BLM for roadless conditions or wilderness values in any previous roadless area inventory or wilderness study of public lands in Wyoming. The EA does not cite any such study, nor does it present any reliable analysis of these lands to document the current on-the-ground conditions with regard to roadless or undeveloped character or wilderness values. Thus, the BLM has failed to comply with its requirement to maintain, on a continuing basis, a reliable inventory of the roadless, wilderness, and recreation values of the undeveloped lands within the Veritas Haystacks project area.

See response above.

According to BLM's Wilderness Inventory and Study Procedures, the submission of such requests from the public suggesting that existing plans do not adequately identify public lands that have wilderness characteristics requires BLM to review and field-check these materials. The Citizens' Wilderness Inventory of Adobe Town and its accompanying cover letter constitute precisely such a request. If BLM determines that the area may have wilderness characteristics, and if actions are proposed that could degrade the wilderness values or the roadless character so as to disqualify the area from further consideration as a WSA... the BLM should, as soon as practicable, initiate a new land use plan or plan amendment to address the wilderness values (H-6310-1 at p.5). So far, BLM has failed to address these wilderness qualities, and now proposes to move forward with actions that could degrade wilderness values, in direct violation of BLM's own Wilderness Inventory Study Procedures.

The "Citizens' Wilderness Inventory of Adobe Town" will be reviewed and field checked as time allows. Since the seismic activity proposed in this EA will not affect wilderness characteristics, further review is not immediate in relation to the proposed action. Review and field check of new information is in conformance with the Wilderness Inventory and Study Procedures Handbook. Since this action will not degrade any areas that may have wilderness values, a land use plan amendment to address wilderness values is not necessary.

In the Citizens' Wilderness Inventory of Adobe Town, which BLM received by July 23, 2001, there is substantial evidence demonstrating that there are in fact roadless areas outside Adobe Town WSA that meet wilderness criteria. The EA does not offer any evidence or analysis to refute our conclusions concerning the presence of roadless areas. In the Veritas Haystacks EA the BLM has ignored this new information rather than evaluating it. NEPA does not allow agencies to ignore key information submitted by the public. See, e.g. 40 C.F.R. § 1502.9(c) (obligation to address significant new information) and § 1503.4 (agency's duty to respond to public comment). These obligations have not been met for the information provided by Biodiversity Associates and others on the existence of wilderness-quality roadless areas in the Veritas Haystacks project area.

See response above and BLM's response to comment letter #1.

Half of the project area lies within the bounds of the Continental Divide--Wamsutter II Natural Gas Project. The Record of Decision for this project states that "Cultural resource inventories and other surveys for sensitive environmental resources will be conducted prior to implementation as directed by the BLM..." (emphasis added). But BLM has so far failed to survey or address wilderness values outside Adobe Town WSA as identified in the Citizens' Wilderness Inventory of Adobe Town, and wilderness values are among the most sensitive of environmental resources. Thus, the BLM's failure to survey for wilderness resources within the project area fails to comply with the Continental Divide--Wamsutter II ROD.

See above response.

On December 22, 2000, the Solicitor of Interior issued an explicit memorandum in regard to potential wilderness under the management of the Rock Springs Field Office, stating that:

"BLM may not refuse to consider credible new information which suggests that WSA boundaries identified in the late 1970's do not include all public lands within the planning area that have wilderness characteristics and are suitable for management as wilderness."

The instructions in the memorandum were amplified and reinforced in BLM Instruction Memorandum No. 2001-075, which states:

"BLM officials must fully consider the conclusions and requirements of the Solicitor's opinion when scoping and preparing plan amendments, plan revisions, and supporting environmental documents. They must also comply with the Solicitor's Opinion with respect to wilderness study areas (WSAs) or other unique and important resources that merit protection."

Incredibly, even in the face of an overwhelming quantity of evidence that suggests that the Veritas Haystacks project area includes wilderness-quality lands, the BLM has failed to address wilderness at all in the Veritas Haystacks EA. This is a shortcoming of immeasurable importance in view of the legal and policy obligations that spring from NEPA and FLPMA.

See above response.

The Proposed Action would degrade roadless and wilderness qualities in the project area. Under the Proposed Action put forward in the EA, truck or buggy-mounted drilling rigs would be driven cross-country. According to the EA, past experience indicates that this type of activity leads to the following result: "some of the shrub plants in the vehicle paths are killed but the underlying grasses and forbs survive" (at p. 5). BLM further admits that "There is potential for use of buggy paths by hunters and other recreationists using ORVs, particularly in the first year" (EA at p. 16). This would potentially lead to the creation of new vehicle roads and trails that could then remain open to motorized travel indefinitely. These new vehicle routes would substantially impact the roadless and undeveloped character of the landscapes within the project area, possibly leading to the development of new vehicle routes. This activity would unquestionably degrade the wilderness qualities of the area.

See above response.

*Within Adobe Town WSA, "Walking and temporarily laying geophones along receiver lines would not detract from the naturalness...No cumulative impacts to wilderness values are expected" (EA at p. 15). But a different standard is applied outside the WSA. Here, "Crushing of vegetation, and temporary impacts from use of equipment is expected and is considered a necessary and due impact when conducting geophysical operations" (EA at p. 16). The assertion that these impacts are necessary and due outside the WSA is demonstrably false in light of the fact that these same impacts will be avoided entirely within the WSA. The application of different standards for "necessary and due" impacts inside the WSA and on neighboring wilderness-quality lands is potentially arbitrary and capricious. Impacts to the scenic, roadless, ecological, and recreation values contained in the Proposed Action are **equally unacceptable** on lands outside Adobe Town WSA that have been proposed for wilderness in the Citizen's Wilderness Inventory of Adobe Town.*

See above response. Public lands outside of the WSA have not been reviewed to determine whether they contain wilderness characteristics as proposed by Biodiversity, et al.

The BLM has failed to evaluate an adequate range of alternatives as required by NEPA. NEPA requires BLM to "rigorously explore and objectively evaluate" all reasonable alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a) and 1508.25(c). In particular, federal agencies must explore alternatives to proposed actions that will avoid or minimize adverse effects on the environment, 40 C.F.R. § 1500.2(3), alternative kinds of mitigation measures, 40 C.F.R. § 1508.25(c)(3), alternatives that would help address unresolved conflicts over the use of available resources (e.g. roadless areas and/or potential wilderness), 40 C.F.R. § 1501.2(c), and other reasonable courses of action, 40 C.F.R. § 1508.25(c)(2).

Strangely, the Veritas Haystacks EA evaluates only two alternatives: (1) the proposed action, and (2) a "no action" alternative that assumes that wildcat drilling will take place. The BLM has failed to evaluate an alternative that would provide appropriate limitations to protect wilderness resources within the wilderness-quality lands surrounding Adobe Town WSA.

BLM considered an alternative that would deny seismic activity within the WSA (p. 8, EA). Consideration of the no action alternative recognized that denying seismic proposal could lead to proposals for wildcat wells. The purpose of geophysical operations is to acquire data on whether or not there are pockets of hydrocarbons and where they are located which results in unnecessary surface disturbance (p. 1, EA). Without that knowledge there is a likelihood that wildcat wells could be proposed. The geophysical project

will not adversely affect potential wilderness characteristics, should they be identified, and therefore would not disqualify the area from further consideration as a Wilderness Study Area.

The BLM has failed to consider an alternative that would permanently protect the wilderness and roadless values that currently are found in the study area. The EA cites the Green River Resource Management Plan, which states, "Most of the planning area is open to consideration of geophysical activities except where off-road vehicle use or explosive charges would cause unacceptable impacts..." (emphasis added). The off-road vehicular activity inherent to the Proposed Action constitutes unacceptable impacts that would degrade wilderness qualities within an area proposed for wilderness in the Citizens' Wilderness Inventory of Adobe Town. For areas determined to have wilderness qualities, and the impacts from a proposed action could degrade the wilderness values or roadless character, WISP states that the BLM must consider in the NEPA document an alternative of mitigating or relocating the proposed action to avoid or minimize impacts on wilderness values; and must also consider the alternative of postponing a decision on the proposed action until the wilderness values can be addressed through a new land use plan or plan amendment, which process should be expedited and completed as soon as possible" (at p. 6). No such alternatives have thus far been considered in the Veritas Haystacks EA. New NEPA documentation is needed to draft and evaluate such alternatives.

Since the proposed action will not adversely affect potential wilderness characteristics, additional alternatives do not need to be addressed. Should BLM review find further public lands suitable for wilderness consideration, analysis would be conducted through the land use planning process.

The BLM must now draft and evaluate additional alternatives. It must evaluate an "all-wilderness" alternative in which these lands would be withdrawn from any surface disturbance that would impact wilderness qualities. The BLM must also draft and evaluate "Minimum Impact" alternatives that would require hand-laying of seismograph cables and the use of helicopters to drill and set charges, while restricting vehicle use to existing roads and trails in accordance with the Wyoming Off-Road Vehicle Policy. Such an alternative would not only be reasonable, but also would be the alternative that best allows oil and gas exploration by private corporations while protecting wildlife, roadless, potential wilderness, scenic, and other resource values of interest to the public at large. BLM's failure to evaluate such an alternative constitutes a violation of NEPA, which must be rectified by the issuance of additional NEPA documentation.

See above response.

The BLM must prepare supplemental NEPA documentation, including a revised or supplemented Resource Management Plan. NEPA regulations require the BLM to prepare supplemental documentation when "There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." The Citizens' Wilderness Inventory of Adobe Town constitutes just such significant new information and must be considered by BLM in its planning efforts. The BLM is clearly required to postpone actions that would degrade wilderness qualities until such time as the applicable Resource Management Plan can be brought up to date. BLM's own policy states unequivocally that, "Where the NEPA process shows that a proposed action would disqualify the area from further consideration as a WSA, BLM should, subject to valid existing rights, postpone the action until wilderness values can be addressed through a new land use plan or plan amendment, which process should be expedited and completed as soon as possible" H-6310-1 at p.6 (emphasis added). Thus, the Green River Resource Management Plan has been rendered obsolete by the submission of evidence of previously undocumented, undeveloped lands of wilderness quality, and a new Resource Management Plan is needed before projects that affect wilderness qualities such as the Veritas Haystacks Seismic Project can be allowed to proceed.

See above response.

A full Environmental Impact Statement is required for the Veritas Haystacks Project. NEPA regulations explicitly delineate statutory requirements for Environmental Impact Statements. These regulations state:

"As required by sec. 102(2)(C) of NEPA environmental impact statements are to be included in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment."

40 C.F.R. § 1502.3. The Veritas Haystacks project meets these criteria in every way. The proposed project area covers 133 square miles of public and private lands, qualifying it as a "major" federal action. If the Proposed Action is allowed to go forward as it currently stands, it would significantly degrade the scenic and potential wilderness qualities found within the area, causing an irretrievable loss of undeveloped and wilderness-quality lands that constitutes a significant and long-term effect on the human environment. For these reasons, a complete Environmental Impact Statement is absolutely required for the Veritas Haystacks Seismic Project.

See above response.

Federal courts have ruled that federal projects that diminish the wild character of roadless areas constitute a significant impact to the human environment and an irretrievable commitment of resources, which require an EIS, not merely an EA. For example, in Wyoming Outdoor Coordinating Council v. Butz (484 F.2d 1244, 1249-1250, 10th Cir. 1973), the courts ruled that logging in a roadless area, even if not pristine and traversed by numerous jeep roads, significantly affects the human environment and requires an EIS; in National Audubon Society v. U.S. Forest Service, (4 F.3d 1072, 1078-1079, 9th Cir. 1993), the courts concluded that the decision to harvest timber on a previously undeveloped tract is "an irreversible and irretrievable decision" which could have "serious environmental consequences" therefore requiring an EIS. The area encompassed by the Veritas Haystacks Seismic Project constitutes a roadless area under the definition of BLM Handbook H-6310-1 (at p.9), and has been shown to possess wilderness qualities in the Citizens' Wilderness Inventory of Adobe Town. The decision to allow off-road travel by 52,000-pound vibrator buggies would result in significant visual impacts that would affect the area's eligibility for wilderness. This constitutes an irreversible and irretrievable commitment of wilderness resources, and requires the hard analysis of an EIS.

See above response.

The initial Veritas Haystacks EA contains numerous shortcomings, and by virtue of these shortcomings, it fails to comply with federal mandates through NEPA and FLPMA. In order to comply with federal law, the BLM must either fully evaluate wilderness qualities and make the required changes to the EA, withdraw the project, or provide appropriate limitations on the project (as are provided within Adobe Town WSA) throughout all parts of the project area recommended for wilderness within the Citizen's Wilderness Inventory of Adobe Town.

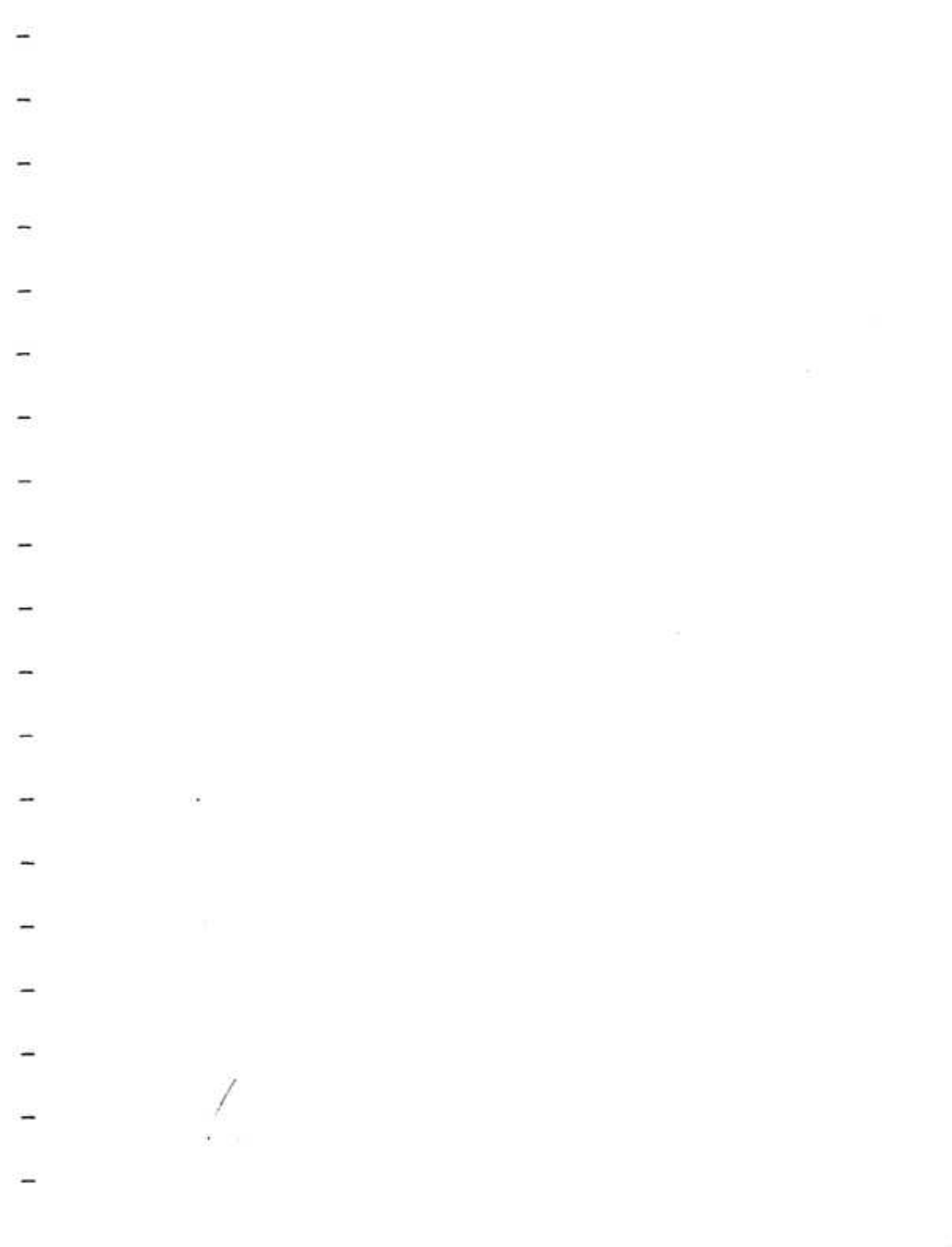
See above response.

Because of the extremely limited wilderness resources found on BLM lands in Wyoming, and because of the outstanding character of the wilderness qualities within the proposed project area, it is imprudent to proceed with industrial activities of any kind within the study area. Until BLM produces a full EIS on the proposed project, WOC stands opposed to seismic testing of any kind within Adobe Town WSA or the surrounding

lands that have been identified as being wilderness-quality in the Citizens' Wilderness Inventory of Adobe Town. Wild lands have spiritual and natural values well beyond the short-term profits reaped by energy companies from oil and gas.

Perhaps Wallace Stegner summed it up best when he stated, "Something will have gone out of us as a people if we let the remaining wilderness be destroyed; if we permit the last virgin forests to be turned into comic books and plastic cigarette cases; if we drive the few remaining members of the wild species into zoos or to extinction; if we pollute the last clear air and dirty the last clear streams and push our paved roads through the last of the silence, so that never again will Americans be free in their own country from the noise, the exhausts, the stinks of human and automotive waste. And so that never again can we have the chance to see ourselves single, separate, vertical and individual in the world, part of the environment of trees and rocks and soil, brother to other animals, part of the natural world and competent to belong in it...The reminder and the reassurance that it is still there is good for our spiritual health even if we never once in ten years set foot in it. It is good for us when we are young, because of the incomparable sanity it can bring briefly, as vacation and rest, into our insane lives. It is important to us when we are old simply because it is there-important, that is, simply as an idea." (The entire "Wilderness Letter" of Stegner from which this is taken is enclosed as an attachment.)

Thank you for your comment.



APPENDIX N



U.S. Department of the Interior

JUN 15 2000

Bureau of Land Management
Rawlins and Rock Springs Field Offices

May 2000



**Record of Decision
Environmental Impact Statement
Continental Divide/Wamsutter II Natural Gas Project,
Sweetwater and Carbon Counties, Wyoming**





United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1828

Cheyenne, Wyoming 82001-1828

In Reply Refer to

6840 (930)

May 22, 2000

Instruction Memorandum No. WY-2000-44
Expires 09/30/2001

To: Rawlins Field Manager and DSDs

From: Associate State Director

Subject: Compliance with the Endangered Species Act (ESA) - Section 7 Opinion on Non-Federal Lands in the Continental Divide/Wamsutter II Natural Gas Project Area (CD/Wam)

An issue regarding compliance with the Biological Opinion (BO) for the CD/Wam Project under Section 7 of the ESA has been raised because of the interspersed pattern of land ownership in the CD/Wam area. Oversight of compliance on the non-Federal lands is the issue being questioned by the U.S. Fish and Wildlife Service (FWS). This Instruction Memorandum is a follow-up to IM No. WY-99-24 - *The Extent of Federal Authority over Actions Occurring on Private Lands - Plants & Wildlife*, dated Feb 23, 1999. IM WY-99-24 gives the basis for what authority the BLM has on non-Federally owned lands.

The Endangered Species Act (ESA) of 1973, as amended, directs every Federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the existence of any proposed or listed species or destroy or adversely modify these species critical habitat (50 CFR §400, BLM 6840 Manual and Sec. 7. (a)(1) of the ESA). More specifically, the BLM has the discretionary authority to authorize actions on public lands in large "project areas" (50 CFR §402.02 uses the term "action area" instead of project area - for the rest of this document the terms will be used interchangeably) for oil and gas development, coal mining, coalbed methane development, etc. Section 7 of the ESA and the requirements of 50 CFR §402 apply to all actions in which there is discretionary Federal involvement or control (50 CFR §402.03). The task BLM must face is how to direct actions which BLM authorizes on public lands, that must also take place on adjacent non-Federal lands to make the project viable, in light of the ESA. This would include authorizations for roads, pipelines, drilling, etc.

Interrelated/Interdependent Actions:

Because of the scope of the actions on these project areas, large amounts of Federal, State, and private lands can be involved. In projects with mixed land ownership, actions on the public lands often drive the project and become the causal agent for all of the actions in the project area. Thus the likelihood of a project occurring only on the non-Federal lands would be remote - due to economics, the ability to produce, and the need for lineal features such as roads and pipelines. The Federal and non-Federal activities then meld together forming an **interrelated** and **interdependent** (I/I) relationship to each other. This relationship requires BLM to expand its scope of analysis to determine the *direct* and *indirect effects* on a proposed or listed species under the ESA, or its critical habitat within the entire project area (50 CFR §402.02). Thus, if a project wouldn't occur "but for" BLM's authorization, then BLM would operate under I/I reasoning.

interrelated ----- actions that are part of a larger action and depend on the larger action for their justification (these actions are **related** to one another as part of a larger action)

interdependent - actions having no independent utility apart from the proposed action (these actions **depend** on the Federal action for their justification/being)

indirect effects - are those effects that are caused by the proposed action and are later in time, but still are reasonably certain to occur
(all definitions are found in 50 CFR §402.02)

Compliance with Section 7:

When BLM authorizes actions on public lands through the issuance or granting of: licenses, contracts, leases, easements, ROWs, or permits, and those actions directly or indirectly cause modifications to the land, water, or air (50 CFR §402.02), the ultimate responsibility for compliance with Section 7 of the ESA remains with the BLM (50 CFR §402.08). An applicant can partner with the BLM when they are requesting an action (Section 7. (a)(3) of the ESA and 50 CFR §402.10 (c) and §402.11 (a)). An incidental take statement is often included in the BO (50 CFR §402.14 (i)) which permits the taking of listed species, other than plants, that result from, but are not the purpose of, carrying out an otherwise lawful activity by the BLM and/or its applicant (50 CFR §402). The applicant is protected from Section 9 of the ESA (Prohibited Acts) when adhering to the terms and conditions of a Section 7 incidental take permit (50 CFR §402.14 (i)) issued to the BLM.

Because the BLM has a responsibility/obligation to provide for the recovery of proposed and listed species, this responsibility drives the BLM to require adherence of certain protective

measures for these species or their critical habitats occurring within a project area. For actions in the project area to be in compliance with the ESA, the BLM would apply the reasonable and prudent measures prescribed in the BO to each individual action, and where applicable, place these measures as terms and conditions of the action.

For example, on a lineal feature such as a road, powerline, or pipeline which crosses both BLM and non-Federal lands, the BLM would reference the reasonable and prudent measures language prescribed in the BO in the applicant's plan of development (POD), and terms and conditions would be placed in the ROW grant that make the grant subject to the POD. If proposed or listed species are determined or thought to occur along any point of the ROW, regardless of land ownership, the issue must be resolved before BLM can grant the ROW.

Because the CD/Wam project invokes the I/I reasoning and a project level BO is issued, applicant(s) must adhere to the reasonable and prudent measures listed in the BO through the Section 7 consultation process, regardless of land ownership, as there is no provision to conduct any other ESA process (i.e.: Section 10 - habitat conservation plan (HCP)) on non-Federal land. The only exception would be to withdraw the application for the overall project and conduct actions only on non-Federal land, then the Section 10 HCP process would apply.

The BLM may receive an incidental take permit in a BO if such take would not jeopardize the continued existence of a species. The applicant and BLM must cooperate and adhere to the reasonable and prudent measures in the BO to minimize take and if take does occur, to stay within the designated amount of take. This cooperation would place the same restrictions on all the cooperating parties, on all lands (regardless of ownership) included in the BO.

The BLM may also deny an authorization on the Federal land portion of an action due to impacts to a proposed or listed species or their critical habitats occurring on non-Federal land within the affected area of an action area if the applicant refuses to comply with the reasonable and prudent measures spelled out in the BO. Thus the BLM must analyze an action to the best of its ability, and provide protection for listed and proposed species, and if designated, their critical habitats to the extent of its legal authority within these project areas - even if they occur on non-Federal lands.

Monitoring Actions in the CD/Wam Project Area:

The best way to ensure the needs of proposed or listed species and/or their critical habitats are met on all lands within the CD/Wam project area, is to monitor compliance of the reasonable and prudent measures listed in the BO. A monitoring plan would be agreed to and carried out by all of the parties involved, including the BLM, FWS, the applicants(s), Wyoming Oil and Gas Conservation Commission (WO&GCC) and other pertinent parties on non-Federal lands. The plan would be designed for the CD/Wam project area to monitor compliance of the

ROWs, APDs, etc.) as terms and conditions. A likely result of a monitoring plan is the creation of a team to conduct periodic field compliance examinations (the frequency to be determined by the cooperators). This team would select and visit projects on any or all lands within the project area. A short report of the compliance examination findings would be shared and distributed to all cooperating parties and operators in the area. The WO&GCC has an internet web site listing all the recently permitted actions for oil and gas within the State. A list of new well/facility locations could be downloaded and included in the report and also used as a possible itinerary for sites for the monitoring team to visit.

If an operator is found to be in non-compliance, a letter to the operator explaining the issue and a solution from the monitoring team should be sent asking for a response from the operator explaining what would be accomplished to regain compliance. The FWS should be promptly notified when non-compliance is detected by sending them a copy of the letter. In the event the non-compliance continues on non-Federal lands, compliance with the agreed upon terms and conditions/reasonable and prudent measures will be the shared responsibility of the FWS and the other cooperating parties. A variety of actions could occur if an operator continues to remain in non-compliance, up to the revocation of an authorization issued on adjacent public lands when appropriate. The FWS would remain the responsible party for the enforcement of unlawful actions under Section 9 of the ESA.

If you have any questions or comments please contact Jeff Carroll (775-6090) or Dave Roberts (775-6099) in the Division of Resource Policy and Management (WY-930).



3 Attachments:

- 1 - Procedures for Section 7 Consultation (2 pp.)
- 2 - Commonly Asked Questions (6 pp.)
- 3 - Explanatory Scenarios (2 pp.)

Distribution

Director (200), Room 5650, MIB	1 (w/o Atch.)
CF	2 (w/Atch.)

Procedures for Section 7 Consultation:

The Section 7 analysis begins with a written request for a list of proposed and listed species to the U.S. Fish and Wildlife Service (FWS) (50 CFR §402.12(c)). If in the written response the FWS states that proposed or listed species occur within the project area, a biological assessment (BA) is prepared to address the impacts to these species (refer to NEPA, 42 U.S.C. 4332(2)(C) and 50 CFR §402.12). If the interrelated/interdependent reasoning is used, an entire project and its actions are analyzed and the BA will apply to all lands in the entire project area (a programmatic BA). All of the analysis/ Section 7 consultation, conferencing, and BA procedures as follows can be done concurrently with, and combined into, the NEPA document (50 CFR §402.06). The analysis in the assessment then hinges on one of the following venues:

1. If proposed species occur within the project area and impacts will jeopardize the species, or their critical habitat is destroyed or adversely modified - initiation of conferencing with the FWS is required (if it is questionable, i.e., "you don't know" - go ahead and initiate conferencing)(50 CFR §402.10 and Section 7. (a)(4) of the ESA). The FWS will assist the BLM through conferencing in identifying and resolving potential conflicts. These species and proposed critical habitat shall be managed by the BLM on public lands with the same level of protection provided for listed species (except formal consultations are not required). Until the conference proceedings are completed, the BLM shall ensure that all actions authorized or carried out do not cause any irreversible or irretrievable commitment of resources or reduce the future management options for the species involved (BLM Manual 6840 and 50 CFR §402.10). The BLM has a responsibility to provide protection for proposed species, and if designated, their critical habitats to the extent of our legal authority within these project areas.

2. If listed species occur within the project area and:

- a. impacts will affect the species or its critical habitat in a beneficial, discountable, or insignificant manner - informal consultation with the FWS is required (50 CFR §402.13 and Sec. 7. (a)(4) of the ESA). If the FWS concurs, the BLM is finished with consultation and no further action is necessary (50 CFR §402.13(a)).

- b. impacts will affect the species or its critical habitat will be adversely affected - formal consultation with the FWS is required (50 CFR §402.14 and Sec. 7. (a)(2) of the ESA). The final outcome of formal consultation is the issuance of a biological opinion (BO) by the FWS (50 CFR §402.14 (g) & (h)). Because of the interrelated/interdependent reasoning under which many of these projects/actions are analyzed, the FWS provides language in the BO which applies to all lands in the entire project area (a programmatic BO). The language in the BO would be very specific to cover the protocols to recover/protect each proposed or listed species found in the project area. This allows actions such as ROWs, APDs, etc.

within the scope of the project area to fall under the programmatic BO so additional Section 7 consultation would not be needed for each individual action. If the BO finds the action to jeopardize the existence of a listed species, the FWS either finds reasonable and prudent alternatives for the action and BLM redefines the action, or the FWS can find no way for the action to occur and the action is not approved as proposed (50 CFR §402.14 (h) and Sec. 7. (a)(2) of the ESA). If a reasonable alternative or initial BO finds the action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat - a no jeopardy BO, the BLM can allow the action to proceed by undertaking the reasonable and prudent measures listed in the BO to minimize the amount or extent of incidental take (50 CFR §402.14 (i) and Sec. 7. (B)(4) of the ESA).

3. If a species becomes listed during the course of the Section 7 consultation process, then it can be included in the ongoing analysis. If a species is listed after the Section 7 consultation process is completed, a reinitiation of the consultation process is required and the BLM and any applicant (operator) shall make no irreversible or irretrievable commitment of resources with respect to the BLM's approved action, which may include ceasing or revoking the approved action until the consultation process is completed (50 CFR §402.09 and Sec. 7.(d) of the ESA).

Commonly Asked Questions:

I. What legal authority does the BLM have to enforce the ESA on non-Federal lands, i.e., private lands (both private surface and private mineral estate) where interrelated/interdependent actions occur due to actions approved by the BLM on Federal Lands?

The BLM has no authority to "enforce" the ESA on non-Federal lands, including private lands. This means that BLM has no authority to do anything on private lands without the explicit permission of the land owner and project proponent utilizing those private lands. However, if the BLM issues an authorization within a project area (50 CFR §402.02 uses the term "action area" - meaning all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the actions, the term project area will be used synonymously with action area throughout this appendix) occurring on both private and public lands, and if the project wouldn't occur "but for" BLM's authorization, then we come under "interrelated/interdependent" (I/I) reasoning. This I/I requires the BLM to increase its scope of analysis (to determine the "effects of an action" - which refers to the direct and indirect effects on a proposed or listed species, or its critical habitat) to encompass the entire project area - which includes the past and present impacts on Federal, State, or private actions and other human activities in a project area. Because the BLM has a responsibility/obligation to provide for the recovery of proposed and listed species, this responsibility can drive the BLM to require adherence of certain protective measures for these species or their critical habitats occurring on adjacent non-Federal lands within a project area. The BLM requires these protective measures on non-Federal lands when a project proponent operating on non-Federal lands becomes a cooperator with the BLM through the BLM's Section 7 consultation/ incidental take statement from the US Fish and Wildlife Service (FWS). This cooperation would place the same restrictions on all cooperating parties, including BLM, over an entire project area which would include the non-Federal land under cooperation. These restrictions would stem from the specific requirements of each of these proposed or listed species and their critical habitats, if designated, found in the project area and would be spelled out in the reasonable and prudent measures found in the Biological Opinion (BO) given to the BLM in response to BLM's submission of a Biological Assessment. The reasonable and prudent measures would then be used as terms and conditions of an specific authorization (pipeline, road, powerline, etc.). The BLM can also deny an authorization on Federal lands due to impacts to a proposed or listed species or their critical habitats occurring on non-Federal land within or outside a project area (see Scenario One in attachment 4).

2. Who has the liability/responsibility to comply with the provisions of the ESA - the mineral holder or surface holder or project proponent/operator? Does the operator requesting the BLM authorization have the responsibility of enforcing the mandates of the ESA on non-Federal (i.e., private) lands?

All of the parties mentioned in the question have the liability/responsibility to comply with the ESA, especially Section 9 (Prohibited Acts), but most appropriately those folks conducting actions (project proponent/operator) which could impact proposed or listed species or their critical habitats would be a responsible party. If the non-Federal land is covered by a Biological Opinion (BO)/ incidental take statement under a BLM Section 7 consultation, the non-Federal land operator will have already agreed to adhering to the terms and conditions spelled out in the reasonable and prudent measures portion of the BO in BLM's authorizing document for the project area. A monitoring plan agreed to by the BLM and the non-Federal land operator(s) to monitor compliance to the terms and conditions spelled out in the authorizing document would be carried out and would be a good way to provide for the needs of proposed or listed species and their critical habitats.

If the BLM is the mineral holder, but not the surface holder, they still have the responsibility to protect proposed or listed species or their critical habitats in any actions they authorize.

If an operator requesting the BLM authorization has no "ties" to the non-Federal lands (i.e., is only operating on BLM lands), then they would not be responsible for any mandates of the ESA on non-Federal lands.

3. On actions occurring on non-Federal land that BLM has no authority over, what is the "cutoff" point for consultation under the ESA for future actions (foreseeable or possibly unforeseeable) -or- when does BLM's liability end? What legal authority/recourse does the BLM have for future actions where we have authorized access across BLM land for a present action occurring on non-Federal land?

BLM's "liability" for carrying out the provisions of the ESA never ends. When analysis shows that the BLM must enter into Section 7 consultation with the FWS on a project, the best information available must be analyzed. The entire scope of the project or entire project area must also be analyzed. Future actions are also analyzed to the best extent possible. When the BLM analyzes an action, it must consider both direct and indirect effects (see question #1 above).

Analysis must be as complete as possible, but if the scope of the project grows (i.e., if the proposed spacing of an oil and gas field grows from 4 wells per section to 16 wells per section) then consultation with FWS must be reinitiated to account for any increased impacts.

If a small action (scope is small) such as a single new well is drilled on adjacent non-Federal land (i.e.; a private land in-holding or "checkerboard" land pattern) that was unforeseen in the initial/ approval planning stage, then BLM's role is tempered by the type of "consultation" the non-Federal land operation(s) was covered by. If the non-Federal land operations are covered by a Biological Opinion (BO)/ incidental take statement under a BLM Section 7 consultation, the oil and gas operator on non-Federal land will have already agreed to adhering to the terms and conditions spelled out in the terms and conditions in BLM's authorizing document for actions occurring in the project area. If in the future, new proposed or listed species are found in the project area, then reinitiation of consultation would have to occur. Any new actions taking place in the project area will be subject to existing terms and conditions and new terms and conditions applied due to the reinitiation of consultation.

A monitoring plan agreed to by the BLM and any operators to monitor compliance of the terms and conditions spelled out in the authorizing document would be carried out. If any noncompliance were noted through monitoring (even on non-Federal lands), the monitoring team would request by letter to the operator in non-compliance what actions will be taken to regain compliance to the terms and conditions, with a copy sent to the FWS and noted in the monitoring report. If an operator refuses to comply with the terms and conditions of the authorization, a variety of actions could occur if an operator continues to remain in non-compliance, up to the revocation of an authorization issued on adjacent public lands when appropriate. Portions of the project up to the entire project could possibly be ceased until compliance is reached as BLM would itself then be in noncompliance with our Section 7 consultation. If the operator complies with the requirements, then this should also be noted in the monitoring report and an occasional "Atta-boy" letter may even be sent to the operator with a copy sent to FWS.

If the non-Federal land is covered by a Section 10 Habitat Conservation Plan (HCP)/incidental take permit, the BLM has no enforcement authority. Although BLM is not the enforcement agency for the ESA, we as a Federal agency still have a responsibility/obligation to provide for the recovery of listed species. Therefore, if a BLM employee were to observe a breach of the ESA, even on non-Federal lands, the proper protocol would be to contact the FWS in a timely manner explaining the situation and allowing them to contact to the offending party. BLM's role is not enforcement, but one of enlightenment.

4. BLM writes a biological assessment (BA) for an oil and gas full field development (analyzed for example at 8 wells/section) which assesses the impacts of the action on both BLM and non-Federal lands and an oil and gas operator decides that no consultation will be initiated on the private portion, how does or would the provisions of Sections 9 & 10 of the ESA apply?

If the BLM issues an authorization for the public lands in a project area, and if the project wouldn't occur (or the scope of the project would be considerably reduced), "but for" BLM's authorization, then we come under the "interrelated/interdependent" (I/I) reasoning. This I/I reasoning requires the BLM to increase its scope of analysis (to determine the "effects of an action" - which refers to the direct and indirect effects on a proposed or listed species or its critical habitat) to encompass the entire project area - which includes the past and present impacts on Federal, State, or private actions and other human activities in a project area. Because the BLM has a responsibility/obligation to provide for the recovery of proposed and listed species and will conduct a biological assessment (BA) on the entire project area and submits this document to the FWS. The BLM must use the best available data for non-Federal lands (or collect data only if it is essential and permission is granted to gather that data) in writing the BA.

Due to this "interrelated/interdependent-ness" of the BLM-non-Federal lands, the biological opinion (BO) given to BLM in response to the BA would cover ALL lands within the project area. The Section 7 incidental take statement would cover ALL lands in the project area. In order for an operator to conduct actions within this project area, they would have to comply to the reasonable and prudent measures in the BO which would then be used as terms and conditions of an specific authorization (pipeline, road, powerline, etc.).

5. Using an oil and gas development scenario, how would wells drilled on non-Federal lands outside a project area (i.e., wildcat wells) be treated in the interest of the ESA?

If the oil and gas well requires no BLM associated authorization, then the BLM only has a general responsibility/obligation to contribute to for the recovery of proposed or listed species as a Federal agency. As a "good neighbor" we might contact the operator reminding them of their responsibility to not violate Section 9 of the ESA (Protected Acts) and to contact the FWS to get an incidental take permit in situations where proposed or listed species may occur. If an obvious violation of the ESA were noted, the proper protocol would be to contact the FWS (by phone or letter) in a timely manner a letter explaining the situation. In these situations, BLM's role is not one of enforcement, but rather one of enlightenment.

6. What types of alternatives can BLM pursue when a project proponent or private landowner is reluctant to work with the U.S. Fish and Wildlife Service (FWS) to initiate a section 10 Habitat Conservation Plan (HCP) on their private lands or comply with conditions of an ESA section 7 incidental take statement - does BLM deny the authorization?

If a Section 10 HCP is conducted by the FWS and an applicant, and the BLM has no associated authorization, there is no authorization to deny. If the authorization is under Section 7 and a private operator is reluctant to comply with the terms and conditions of an authorization (associated with either public or non-public lands), then the BLM can also deny that authorization on Federal lands due to impacts to a proposed or listed species or their critical habitats occurring off public land within or even outside a project area (see Scenario One in attachment 4). If the authorization is already granted and an operator does not comply with the agreed upon terms and conditions of the authorization, a variety of actions could occur if an operator continues to remain in non-compliance, up to the revocation of an authorization issued on adjacent public lands when appropriate.

7. Which laws take precedence over the ESA?

While other laws such as the Mineral Leasing Act (MLA) may take operational precedence over the ESA, the ESA is a law that usually "conditions" or "tempers" (i.e., where, when, how, etc.) a project, it rarely says "no" - usually there is a way to conduct business and still provide for protection of proposed or listed species. Concerning laws of egress/ingress and access, from Federal to private lands, the Federal government doesn't "guarantee" physical access (this is true in cultural as well as T&E issues) so preserving an important natural resource could preclude some types of physical access (see scenario one in attachment 4). In the case of the MLA, it doesn't say BLM "has" to prevent drainage (we just do so to try and conserve/protect Federal assets).

8. Which agency - BLM or FWS - is the enforcement agency for ESA matters on private lands. If the FWS is the "enforcer" and BLM completes section 7 consultation under ESA and the operator chooses to initiate a section 10 habitat conservation plan on the private lands, can BLM be "held hostage" by an action that "takes" or "jeopardizes" a threatened or endangered species on the private lands portion of the project?

BLM does not have regulatory authority for ESA matters on private lands and thus is not the proper enforcement agency. However, the goal and responsibility of the BLM along with the FWS and our private land neighbors and users is, and should be, to keep listed species from heading down the path to extinction. The role of the BLM would best be defined as a partner! We would welcome the sharing of the use of our Section 7 consultation by our private land neighbors when a project area is considered to be "interrelated/interdependent" (I/I). All partners must agree to adhere to the same terms and conditions we (BLM) are subject to under the reasonable and prudent measures found in a BO rendered by the FWS to obtain our incidental take statement if needed/authorized. A private land owner/user is subject to the same requirements under section 9 of the ESA - Prohibited Acts as the BLM is.

If a specified number is determined as "take" of a listed species in an incidental take statement, and that number is reached (or exceeded) on public or non-public lands, then an immediate reinitiation of Section 7 consultation by BLM with FWS must occur - and possibly the ceasing of operations on a project (if FWS believes it is warranted) until a new incidental take statement is obtained. While this may be construed as FWS holding us "hostage," BLM would be out of compliance with the conditions of the incidental take statement and must do everything in its authority to stay within the law.

Although BLM is not the enforcement agency for the ESA, we as a Federal agency still have a responsibility/obligation to provide for the recovery of listed species. Therefore, if a BLM employee were to observe a breach of the ESA, even on non-Federal lands, the proper protocol would be to contact the FWS in a timely manner explaining the situation and allowing them to contact the offending party. BLM's role is not enforcement, but one of enlightenment.

9. How does the authority/responsibility argument apply to other Federal actions (such as grazing, mining, etc.) which BLM authorizes and which invoke the interrelated/interdependent ("but for") clause under the ESA and occurs over both BLM and private lands? (See also #1 above for I/I issues)

All Federal actions are covered by the same rules, regulations, laws and policies where applicable. Many of the examples used in this IM are geared to an oil and gas

scenario, but the logic of the responses applies to any action authorized by the BLM. So whether an action is a ROW to carry water through a pipeline, a fiber optic or other communication line, a grazing allotment that has private land in holdings, a cooperative weed management project, or other project encompassing private lands - the BLM again doesn't have any specific authority off of its public lands (i.e., on private or other non-Federal lands). However, because the BLM does have a responsibility/ obligation to contribute to the recovery of proposed or listed species, this responsibility can drive BLM to require adherence of certain protective measures for listed species or their critical habitats occurring on adjacent private lands within a project area as a condition of an authorization or to deny an authorization on public lands within a project area due to impacts to proposed or listed species occurring on private lands within a project area.

10. Does BLM have the option of not issuing a right-of-way (ROW) on Public Land due to the ESA?

Yes, the BLM has the "option," even obligation, of not issuing a ROW on Public Lands (see scenario one in attachment 4) if issuing the ROW would adversely affect the likelihood of recovery of a proposed or listed species, detrimentally affect a listed species' critical habitat, or possibly cause a "take" of a listed species. However, the BLM has the responsibility to try to provide "reasonable access" wherever possible.

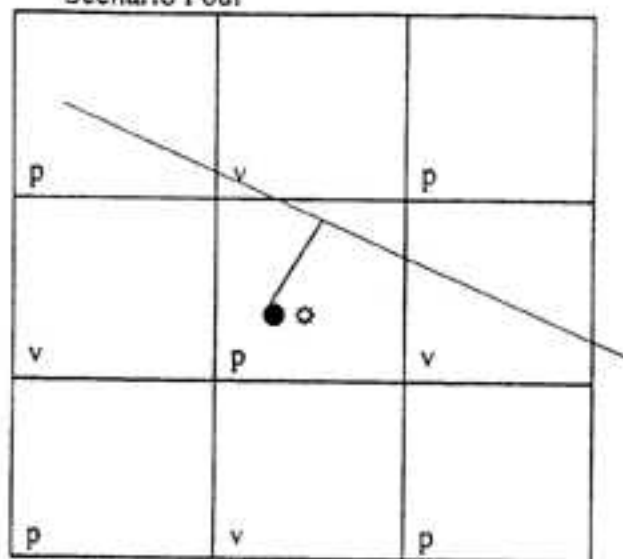
11. Can a BLM wildlife biologist collect data on proposed or listed species on non-Federal lands?

The BLM does not have any independent, universal authority to conduct baseline inventories for proposed or listed species on non-Federal surface lands (see I.M. No. WY-99-24, P.4 Split Estate). Only if in the best interest of the Federal Government would a BLM specialist consider gathering data on non-Federal lands. If it is determined to be in the best interest of the Federal Government, then the specialist must seek permission from the private landowner to collect data. If permission is not granted, and it is not possible for a BLM specialist to gather the information via other methods (ocular, records research, literature review, view of recognized experts, other agency data, etc.), and it is imperative that information be available for compiling a BA or issuance of an authorization, then either; the applicant or operator must obtain the information needed, or the FWS must utilize the best scientific and commercial data available (50 CFR §402.14 (g)(8)) when formulating their BO. If the available data is poor or lacking, then the FWS may have to err on the conservative side in their choice of reasonable and prudent alternatives and reasonable and prudent measures.

Other Sources of Information:

- The Endangered Species Act of 1973 (As Amended through the 100th Congress) (Oct. 7, 1988)
- 50 CFR 402 - Interagency Cooperation - Endangered Species Act of 1973, As Amended
(The CFRs can be found on the internet @ -----> <http://www.access.gpo.gov/nara/cfr>)
- Endangered Species Consultation Handbook - *Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* - US Fish & Wildlife Service and National Marine Fisheries Service, March 1998 Final, (for sale by the Govt. Printing Office ISBN 0-16-049596-2) about 3" worth!!!
- BLM's 6840 Manual - Special Status Species Management

Scenario Four



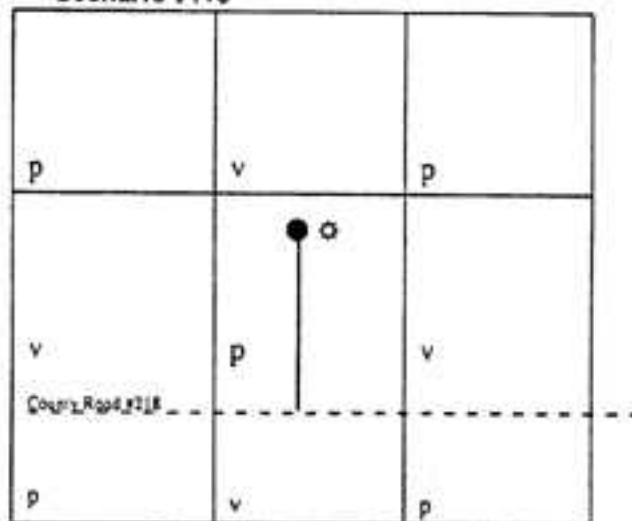
It is now 5 years later and Jake the private land oil & gas operator has bought out Sam, decides that since oil is now \$35 a barrel he would like to place a well (●) from a point on private land utilizing the ROW road. The local BLM wildlife biologist sees the drill rig driving into the site one day when she's conducting Mtn. Plover surveys on the BLM. Through her binoculars she sees that the flagged drill site is going to cause a "take" of an endangered species as it is too close to the active bald eagle nest (○). Even though no Federal action is taking place here - what does she do?

1. Since she and Sam had worked together 5 years ago and Jake agreed with what she had worked out with Sam - to cooperate under BLM's Section 7 incidental take statement and no new wells were allowed off of the ROW road without agreement of the monitoring team, she contacts the monitoring team and they request he move the well 3,500' to the north. Jake moves the well site and "no problemo."

- or -

2. She didn't start working with BLM until 3 years ago and the previous biologist forgot to stip the ROW for future T&E species impacts (oops!). She now contacts the FWS and lets them know about this potential violation of Section 9 of the ESA.

Scenario Five



In this scenario Sue the private land oil & gas operator decides that since oil is now up to \$40 a barrel, she would like to place a well (●) utilizing County Road #218 (-----) to access the private land. No actions take place or are authorized on/by the BLM. The local BLM wildlife biologist sees the drill rig driving into the site one day when he's conducting Blowout Penstemon plant surveys on the BLM. He knows that the flagged drill site is going to cause a "take" of an endangered species as it is too close to the active bald eagle nest (○). What does he do?

As a "good neighbor" he contacts Sue and tells her she may be violating Section 9 of the ESA and calls the FWS to inform them of the action. Sue contacts the FWS, they request moving the well site 3,500' to the south, she moves the drill pad and all is well again in the oil patch!



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Wyoming State Office
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In Reply Refer To

6500 (930) 2

FEB 23 1999

Instruction Memorandum No. WY-99-24
Expires: 9/30/00

To: Field Managers

From: ASSOCIATE STATE DIRECTOR

Subject: The Extent of Federal Authority over Actions Occurring on Private Lands - Plants & Wildlife

At a recent meeting with some of the Field Offices (FOs), there was considerable discussion about the extent of Federal authority (specifically BLM's authority) to direct or control actions taking place on private lands nearby or adjacent to Public Lands. Most notably, the discussions focused on whether BLM had authority, or even responsibility, to inventory wildlife or plants (including Federally listed Threatened and Endangered Species T&E) on private lands (with private mineral ownership), and whether BLM could dictate the conduct or performance of development activities on private lands with known or potentially important plant or wildlife habitat or populations. At this meeting, the FOs requested the Wyoming State Office (WSO) to summarize the current policy positions of the Bureau with regard to these issues. We will attempt to do that in this memorandum. The following information has been reviewed by the Regional Solicitor.

Basic Rule:

There are a number of laws that provide differing degrees of Federal authority. That notwithstanding, the basic rule remains: the BLM has no direct authority over resource information gathering or land management activities taking place on non-Federally owned lands.

It is important to distinguish between Federal lands and Federal actions. Only the Federal Land Policy and Management Act (FLPMA) ties BLM's responsibilities to the use of Federal lands. Under the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), BLM's responsibilities are triggered by Federal actions. Federal actions within the meaning of NEPA and ESA often occur on, or have an impact on, non-Federal property. The crucial factor under NEPA and ESA is not whether Federal land but a Federal action is involved. The degree of involvement necessary to trigger the requirements of NEPA and ESA vary, but the approval of a Right-of-Way (ROW) that will cross both Federal and non-Federal land constitutes sufficient Federal action to bring those statutes, as well as FLPMA into play.

Inventories - Generally:

The BLM does not have any universal or overriding authority to enter upon private lands to gather plant/wildlife habitat and resource information. That does not, however, prevent us from asking permission of the landowner to gather information, as needed. Nor does it prevent us from utilizing any other legal means of inventorying or remote sensing. A resource specialist can stand outside the private land boundary and view the private lands with optical and auditory aids, synthesize information from aerial photos and satellite imagery, query any and all legally accessed databases, interview knowledgeable people, etc. We may also use professional judgement to make limited interpolation of intervening private lands resource information based on relevant information from the surrounding lands, where appropriate. See Attachment 1 for a Matrix of "BLM's Authority for Gathering Data on Private Lands."

NEPA:

The National Environmental Policy Act (NEPA) requires that Federal agencies consider the environmental impacts of their proposed actions and alternatives. This requirement applies to all actions authorized, funded, or carried out by the Federal agency, regardless of whether the action occurs on Federally owned lands or lands of other ownership. While this requirement does not give the Federal Government any "control" over the private lands, it does obligate consideration of non-Federally owned lands in our NEPA analyses. Furthermore, when information is incomplete or unavailable, agencies must disclose that information is incomplete or unavailable, and must obtain that information, to the extent legally possible, if the overall costs of doing so are not exorbitant. If the costs of obtaining the information are exorbitant, or the means of obtaining it are not known, agencies must:

1. State that the information is incomplete or unavailable.
2. State the relevance of this information to evaluating "reasonably foreseeable" significant environmental impacts.
3. Summarize "credible scientific evidence" relevant to evaluating these impacts.
4. Evaluate these impacts "based upon theoretical approaches or research methods generally accepted in the scientific community."

Agencies have a continuing duty to gather and evaluate environmental information. Barring the above factors, the information in a NEPA document does not have to be exhaustive, but it does need to be comprehensive enough to allow for a "reasoned decision."

FLPMA:

For most BLM actions (i.e., authorized, funded, or carried out) regarding the management of plant or wildlife habitat, our agency is guided by the language of Sec. 302 (b) of FLPMA which states (paraphrased) the agency shall take any action necessary to prevent unnecessary or undue degradation of the lands (including the plant and wildlife resources inhabiting the lands). This protection has usually been applied to crucial or essential plant or wildlife habitats. To extend this consideration to non-Federal lands for plants or wildlife in general (not listed T&E species), we have typically borrowed a principle called the "rule-of-reason" from the cultural program. The "rule-of-reason" states, in effect:

The BLM will limit its responsibility for inventory, evaluation, and protection of (plant and wildlife) resources on lands outside the administrative jurisdiction of the Bureau, according to the degree to which Bureau decisions condition or control the location of surface-disturbing activities on those lands. Where the

location of potential surface disturbance is dependent on, integrally related to, or directly associated with a Bureau decision, so that the Bureau decision would foreclose locational alternatives for surface-disturbing activities on non-Bureau lands, the BLM shall be accountable for effects to resources on lands so involved. Where a Bureau decision would leave such locational alternatives open, the Bureau shall take into account only those potential effects to [plant and wildlife] resources on non-BLM lands that are reasonably attributable to the Bureau decision.

An example of the application of the "rule-of-reason" could be as follows:

If ROW starts and ends on Public Land, but in the middle crosses private or State land (e.g., checker-board), the BLM may effectively control where the ROW will be located through a Plan of Development (POD), even on non-Federal lands. Therefore, if the ROW has a potential effect on crucial or essential plant or wildlife habitats or populations, the Bureau might be considered responsible for that effect. The same may hold true if the ROW only starts on Public Lands, but ends on non-Federal land. In these cases, the BLM is potentially controlling where the ROW will be located for some distance onto the private land.

Beyond the "connectivity" aspects of the "rule-of-reason" stated above, the BLM does not have any universal or overriding authority to dictate or restrict surface disturbance or development on private lands.

The regulations and other guidance promulgated from Sec. 505 of FLPMA and the 1920 Mineral Leasing Act require that when ROWs are granted, the permitting agency (i.e., BLM) is mandated to include terms and conditions which will minimize harm to plant or wildlife resources resulting from the ROW. An ROW is granted only on the Federal ownership portion, but is evaluated on the entire project for its entire length, regardless of land ownership. A POD may be an integral part of the project. Non-compliance with the POD or other terms and conditions of the ROW can be grounds for termination of the ROW grant.

ESA:

The "rule-of-reason" is not applicable to BLM's responsibilities under the ESA. Section 7 of the ESA requires an agency to look at all of the impacts, direct and indirect, interrelated and interdependent, on Federal and non-Federal lands when evaluating a proposed action. If the cumulative impacts of the approval of a proposed action on Federal lands will jeopardize the continued existence of a threatened or endangered species, or will adversely modify critical habitat, the BLM can not approve the proposed action even though the prohibited impact may occur on non-Federal lands. In this regard it should be remembered that the proposed action must be one that the BLM has the discretion to either approve or deny. It should also be remembered that the steps the BLM must take in order to comply with Section 7 of the EPA are to be "reasonable." For example:

A 5 mile long pipeline ROW starts in one county, cuts across the corner of another county, and ends in a third county. Along the route, the proposed ROW crosses two, 320 acre tracts of BLM land, each with prairie dog complexes on them. Since Public Lands are involved, and since ROWs are a discretionary action, the BLM certainly has some ESA responsibilities in this situation. Consultation should be initiated with the U.S. Fish and Wildlife Service (FWS), and black-footed ferret clearances along the entire proposed ROW route should be performed, as a minimum. Other actions may be required as an outcome of the consultation process. All land ownerships along the ROW should be cleared in compliance

4

with species specific criteria, since they are interdependent and interrelated to the entire proposed action. It would be unreasonable, however, to require clearance of all prairie dog towns in the entire three county area solely as a result of this project proposal.

In situations where BLM does not know, but suspects, there may be some T&E species or their habitat on private lands effected by a Federal action, our minimum obligation is to "be a good neighbor" and apprise the applicant/proposer of the prohibitions of the ESA, and let them know who to contact if they should come across any T&E species. The BLM still does not have any independent, universal authority to conduct baseline inventories for T&E species on private lands.

Split Estate:

Finally, an interpretation of the BLM's responsibility to direct or control actions (e.g., conduct inventories of plants and wildlife and their habitat or to preclude any undue or unnecessary degradation of plant or wildlife resources or their habitats) on split estate lands needs to be discussed. In reference to plant and wildlife resources on split estate lands, the following applies:

Federal surface/private subsurface (subsurface estate value type may vary). This combination is rare and would be treated much like a Federal surface/Federal subsurface issue. The Public Lands would be open for plant and wildlife resource data gathering without restraint. Any activities resulting from the extraction of privately owned minerals resources would be subject to implementation of plant and wildlife mitigation measures if needed.

Private surface/Federal subsurface (subsurface estate value type may vary). This is the more common split estate situation. The BLM has a mineral "interest" in these lands. The BLM has the responsibility to meet the consistency requirements of FLPMA as spelled out in the previous discussions, so the same standard for environmental protection of these split estate lands would apply as would be used for Federal surface/Federal subsurface. A BLM authorized action to retrieve Federally owned minerals underlying private surface is a Federal action requiring NEPA analysis and results in the need for data on plant and wildlife (including T&E species) resources to accomplish these NEPA requirements. As stated above in the discussion of "Federal surface/private minerals" that such lands will be open for data gathering "without restraint," the same will not be true in a "private surface/Federal minerals" situation. Unless the surface owner gives the BLM or an operator permission to gather data from all of his or her lands, data gathering should be restricted to the areas one can reasonably expect to be impacted by the proposed action. The BLM specialist desiring inventory information on these split estate private lands needs to first seek permission from the private landowner to conduct inventory work. If permission is granted, then conduct the work. If permission is not granted, then the responsibility is placed on the operator wanting to conduct the mineral activity to acquire permission for the BLM specialist. If the owner of the surface does not voluntarily grant the BLM or the operator permission to conduct the necessary inventories and studies, the operator must obtain permission through appropriate legal action. The operator will be seeking to enforce a right reserved in a Federal patent and derived from a Federal lease and will pursue legal remedies in a Federal District Court. If the plant and wildlife inventory work can't be accomplished then the desired activity will have to wait until

this information can be gathered. All this said, the BLM should carefully consider the views of the surface owner and the effect on the owner's use of the surface lands especially in the implementation of possible mitigative measures.

We trust this discussion will help clarify the position of the BLM relative to our authorities for plant and wildlife habitat resource management on private lands. If you have any questions about this matter, please contact either Jeff Carroll or Dave Roberts at 307-775-6090, or 307-775-6099, respectively.

/s/ Alan L. Kesterke

1 Attachment:
1 - Authority Matrix (1 p.)

Distribution

Director (230), Room 204, LS	1 (w/o atch.)
CF	2 (w/atc.)

BLM's AUTHORITY for DATA GATHERING on PRIVATE LANDS
 ++++++
WILDLIFE/PLANTS and T&E SPECIES RESOURCES MATRIX

LAND STATUS	PERMISSION REQUIRED	AUTHORIZED RESPONSE ¹
BLM Surface/ BLM Subsurface	None Needed	Conduct Data Gathering (Inventory, Monitoring, etc.)
BLM Surface/ Private Subsurface	None Needed	Conduct Data Gathering (Inventory, Monitoring, etc.)
Private Surface/ BLM Subsurface (for actions that are directed as a result of the subsurface estate value - for example: O & G exploration and development, mining, or other mineral related activities, etc.)	Permission must be requested and if: Yes - Permission to access lands for Inventory of T&E or Wildlife/ Plants <u>received</u> .	Conduct Data Gathering on those private lands subject to size of area where permission is received, i.e. 1. entire area; 2. localized area around project area; 3. project area - affected area only, etc.
	Permission must be requested and if: No - Permission to access lands for Inventory of T&E or Wildlife/ Plants is <u>denied</u> .	1. Operator must obtain permission for access through appropriate LEGAL action. a. If legal access is <u>obtained</u> , then data gathering should be restricted to the areas where one would "reasonably" expect impacts by the proposed action. b. If legal access is <u>not obtained</u> , then data gathering will not be done on-site and all analysis/data gathering must be done through other methods and be so stated in the appropriate analysis document. If it is suspected that a T&E species or critical habitat will be affected - contact the U.S. Fish & Wildlife Service. If it is suspected that wildlife critical/essential habitat will be affected - contact the Wyoming Game & Fish Department.
Private Surface/ Private Subsurface & Private Surface/ BLM Subsurface (for actions that are <u>NOT</u> directly the result of the subsurface estate value - for example: Rights-of- Way, seismic lines, etc.)	Permission must be requested and if: Yes - Permission to access lands for Inventory of T&E or Wildlife/ Plants <u>received</u> .	Conduct Data Gathering on those private lands subject to size of area where permission is received, i.e. 1. entire area; 2. localized area around project area; 3. project area - affected area only, etc.
	Permission must be requested and if: No - Permission to access lands for Inventory of T&E or Wildlife/ Plants is <u>denied</u> .	There is <u>no authority for LEGAL action</u> in this case. Data gathering will not be done on-site and all analysis/data gathering must be done through other methods and be so stated in the appropriate analysis document. If it is suspected that a T&E species or critical habitat will be affected - contact the U.S. Fish & Wildlife Service. If it is suspected that wildlife critical/essential habitat will be affected - contact the Wyoming Game & Fish Department.

Authorized Response¹ - The BLM may also request or require that the proponent/operator obtain ("contract out") appropriate wildlife/plant resources data, or the proponent/operator may request that they themselves obtain appropriate wildlife/plant resources data (usually to expedite a permit).

APPENDIX O



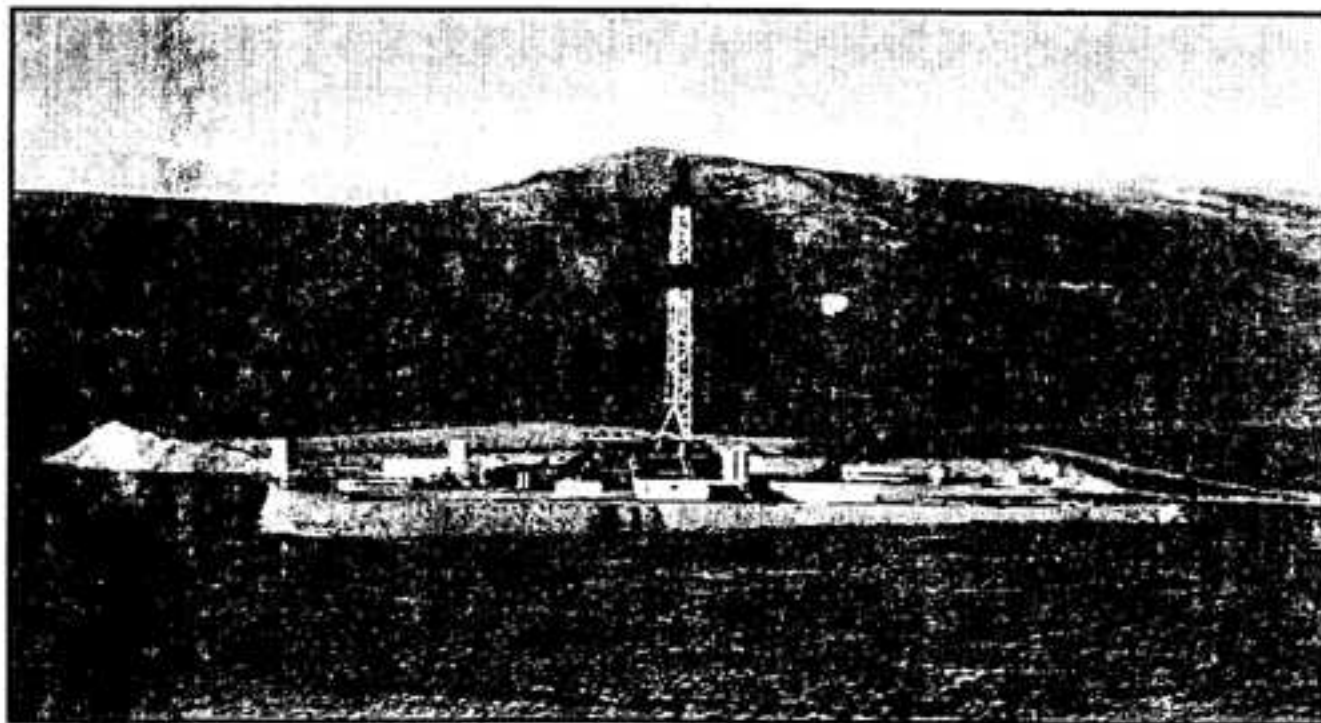
U.S. Department of the Interior
Bureau of Land Management
Wyoming State Office

Pinedale Field Office

July 2000

RECORD OF DECISION

Environmental Impact Statement for the Pinedale Anticline Oil and Gas Exploration and Development Project Sublette County, Wyoming



APPENDIX C

ADAPTIVE ENVIRONMENTAL MANAGEMENT PROCESS

APPENDIX C

Draft Adaptive Environmental Management Planning Process for the Pinedale Anticline Project Area

Introduction

This document outlines the planning process for Adaptive Environmental Management (AEM) of the Pinedale Anticline Project Area (PAPA). This document describes the basic components of AEM and steps involved in its implementation.

The PAPA Draft EIS contains a detailed description of the speculative nature of exploration and development in the PAPA. Indeed, based on the limited exploration that has taken place to date, it is impossible to predict how future development will proceed. The extent and nature of gas reserves in the PAPA are unknown and are expected to remain so for several years. Some believe that development potential in the PAPA is enormous and that hundreds of wells may be necessary to adequately drain all the reserves. Others believe that development potential is much more modest and essentially limited to the crest of the anticline and perhaps a few small, isolated areas away from the crest. All agree that there is a great deal of uncertainty about future development. Because of this uncertainty, a number of assumptions were necessary to predict the impacts associated with future development. Those assumptions may or may not be correct.

Purpose and Need

There is at least equal (if not more) uncertainty regarding how the environment will react to future development in the PAPA. For instance, will a buffer of 1,000 feet around nesting ferruginous hawk nests prevent nest abandonment in all cases? Will best management practices be adequate to prevent water quality degradation in the New Fork River? Will deer and antelope respond to new development as predicted in the wildlife models? How can we provide answers to these questions? These questions are particularly relevant given our current ability to predict cumulative perturbations on the ecosystem. For instance, the big game animals occupying the PAPA do so year-round but many migrate into the area during the winter. Impacts occurring elsewhere on their range could affect the number of animals on the PAPA. The same applies to air quality where a number of cumulative sources affect Class I airsheds. Predictions regarding the severity of the impacts are complicated further by the fact that some of the development may occur on private and state lands where protective measures (such as seasonal restrictions to protect big game and raptor nests, no surface occupancy stipulations around wetlands, etc.) are not typically applied. What will be the cumulative impacts on the Sublette deer herd when seasonal restrictions are imposed on only that portion of their winter range that occurs on Federal lands and minerals? Will perturbations on private lands increase density on Federal lands resulting in deteriorating quality of habitat? Some very sensitive resources within the PAPA (such as wetlands and riparian areas) are located almost entirely on private and state lands where separate non-federal controls to protect the resources are applicable.

The uncertainties as to where and at what level development will proceed as well as uncertainties associated with the environmental sciences that were used to predict impacts suggest that the one-time determination of impacts that is included in the EIS may not be appropriate for this project. However, a carefully prepared and thoroughly evaluated AEM Plan and process may be suitable for dealing with these uncertainties. Such a plan/process would provide a mechanism for continuously modifying management practices in order to allow continued exploration and development while continuing to protect the environment.

CEQ regulations require appropriate application of continual monitoring and assessment. Section 102(2)(B) of NEPA calls for "methods...which will insure that presently unquantified environmental amenities and values may be given appropriate consideration." CEQ regulations (40 CFR 1505.2(c); 1505.3(c) and (d)) state "a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation" and that agencies "may provide for monitoring to assure that their decisions are carried out and should do so in important cases." The lead agency must "upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision." And, "upon request, make available to the public the results of relevant monitoring."

Goals and Objectives

The goals and objectives of the AEM process are to develop resource monitoring plans for specified resources to, among other things:

- Determine the effects of PAPA development on these resources;
- Determine the effectiveness of the mitigation measures contained in the Record of Decision (ROD);
- Modify the mitigation measures as deemed appropriate to achieve the stated goal/objective;
- Assure that non-oil-and-gas related BLM decisions (such as grazing, recreation, etc.) regarding the PAPA are coordinated with gas-related development;
- Provide a rapid response to unnecessary/undue environmental change;
- Validate predictive models used in the EIS and revise the models/projections as necessary based on field observations and monitoring;
- Accurately monitor and predict cumulative impacts through BLM maintenance of a Geographic Information System (GIS) for the PAPA including all activities (natural gas, residential, agricultural, etc.) on Federal and non-Federal lands and how they are affecting resources;
- Allow for stakeholder participation in future decision making;
- Provide guidance for monitoring (surveys) upon which the need to initiate Section 7 consultation with the USFWS will be determined.

Resource Monitoring Plans and Objectives

Monitoring Plans will be prepared for the following resources and activities. The determination of who will do the on-the-ground monitoring will be made by the Task Group assigned to prepare the monitoring plan.

• Wildlife Resource

• Big Game - Mule deer, antelope

- ① Monitor and document mule deer and antelope populations associated with the PAPA for changes, if any, in numbers, distribution, and reaction to oil/gas development.
- ② Document changes, if any, in crucial winter habitat (Breaks and Mesa) and quality, and changes in animal numbers, distribution, and reaction.

• Upland Game - Sage grouse

- ① Monitor and document sage grouse population, breeding and nesting activity associated with the PAPA for changes, if any, in numbers, distribution, and reaction to oil/gas development.
- ② Document changes, if any, in breeding and nesting population numbers, distribution, habitat quality, and reaction to oil and gas development.

• Raptors - Ferruginous hawk, other raptors

- ① Monitor and document raptor populations and their nesting activity and locations within the PAPA.
- ② Document changes, if any, in nesting locations, active nest sites, and their reaction to oil/gas development.

• T/E & Sensitive Species - Bald eagle, black-footed ferret, mountain plover

- ① Complete clearance surveys and document results for these species within the PAPA.
- ② For sightings or sign, initiate consultation with the USFWS and initiate intensive monitoring for the species occurrence and distribution.

• Water Quality

• New Fork River

- ① Complete a water quality survey and analysis of the New Fork River (above and below project activity) and monitor and document on an annual basis chemical changes, if any, in water quality and quarterly conduct ocular monitoring surveys for changes in color/sediment quality.

• Livestock Water Wells

- ① Complete a water quality survey and analysis of all water wells within one mile of a drilling and/or producing natural gas well.
- ② Annually complete a survey and report on changes, if any, in the quality of well water.

• Reclamation/Best Management Practices

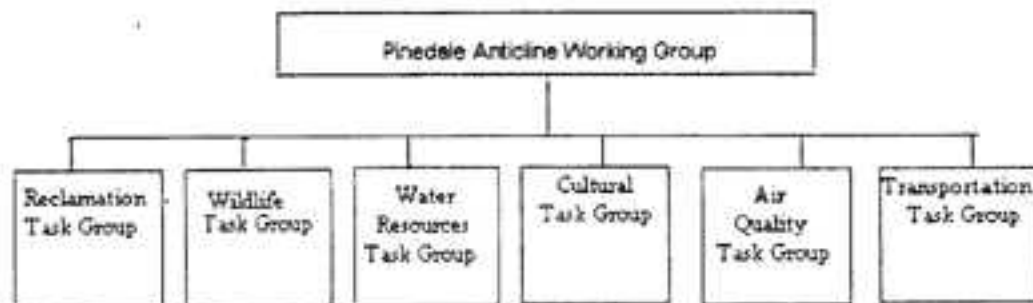
• Surface disturbance revegetation

- ① Annually monitor and report on disturbed site reclamation/revegetation and invasive species concerns.

- **Air Quality**
 - Nitrogen oxide emissions
 - ① Complete an annual monitoring report of actual on-the-ground calculated potential NO_x emissions (i.e., the level of NO_x emission from permitted, actually constructed/installed facilities based upon the permitted level of emissions per well location, compressor facility, etc.) for the Jonah II and Pinedale Anticline project areas.
 - ② Continue to cooperate in the implementation of existing visibility and atmospheric deposition impact monitoring programs. Evaluate need for additional monitoring.
- **Cultural Resources**
 - Discoveries
 - ① Complete an annual report on the context of the archeological and historic resources discovered during development.
- **Transportation**
 - Access roads and sales pipelines
 - ① Monitor construction to ensure design and use standards are met and maintained. Assess development patterns to determine most effective corridors for main transportation facilities.

AEM Planning Process Implementation Model

The BLM Pinedale Field Manager will implement the AEM process by establishing the *Pinedale Anticline Working Group (PAWG)* and *Task Groups (TGs)*. The PAWG will function as an oversight working group consisting of members from BLM, the cooperating agencies, operators, environmental community, and the public. The structure of the PAWG will be as follows:



AEM Membership. The membership of the PAWG may include representatives from the following federal, state and local agencies, public, and environmental community:

- Bureau of Land Management [Pinedale Field Office and personnel with special expertise from other BLM offices]
- U.S. Fish and Wildlife Service
- U.S. Army Corps of Engineers
- USDA Forest Service
- State of Wyoming agencies [Wyoming Game and Fish Department, Wyoming Department of Transportation, Wyoming Department of Environmental Quality - Air and Water Quality Divisions, State Historic Preservation Office, State Engineers Office, Wyoming Oil and Gas Conservation Commission, etc.]
- U.S. Environmental Protection Agency
- Sublette County government [particularly planning and zoning, road and bridge]
- Town of Pinedale
- Oil/Gas Operators
- Members of the public
- Environmental groups [Wyoming Outdoor Council, Greater Yellowstone Coalition, Wyoming Wildlife Federation, etc.]
- PAPA landowners and livestock operators
- University of Wyoming
- Other affected and interested parties

Work Group Functions. An AEM public meeting will be held in Pinedale within two months of the issuance of the Pinedale Anticline ROD to establish the PAWG and select membership. The primary function of the PAWG will be to:

- Oversee the development and implementation of monitoring plans for the PAPA natural gas exploration and development;
- Meet at least once a year or more often as needed;
- Keep written record of meetings and disseminate to members and interested public;
- Conduct an annual field inspection to review the implementation of construction and rehabilitation operations;
- Review status quo and any new information since last meeting (e.g., monitoring results of impact mitigation effectiveness);
- Synthesize monitoring plan activities/expectations for the coming year, based upon operator input and new information;
- Review recommendations from the *Task Groups* and submit a recommendation to BLM (e.g., management practices and monitoring needs for upcoming field season);
- Oversee implementation of monitoring.

Task Group Membership. The membership of the individual *Task Groups* will be selected during the first public meeting within two months of the issuance of the Pinedale Anticline ROD. A suggested membership for consideration is listed in Attachment I.

Task Group Functions. During the public meeting held in Pinedale within two months of the issuance of the Pinedale Anticline ROD, separate resource or activity *Task Groups* (TGs) will be established. The primary function of the TGs will be to complete the following:

- Prepare and oversee implementation of specified resource/activity monitoring plans;
- Keep written record of meetings and disseminate to members and interested public;
- For the second AEM meeting (February 2001), TGs will:
 - Prepare monitoring plan to include the following:
 - ① Implementation protocol including who in industry will fund and conduct monitoring;
 - ② Annual monitoring report requirements and meeting frequency;
 - ③ Resource concerns (e.g., based upon current conditions, drilling plans, etc.);
 - ④ To aid in the preparation of the monitoring plan and for evaluation of monitoring results, review, evaluate and summarize past/present data pertaining to the resource;
 - ⑤ Annual survey/inventory, monitoring, etc. that needs to be completed;
 - ⑥ Resource protection/mitigation measures for resource as identified in the ROD;
 - ⑦ Evaluation of mitigation measure(s) effectiveness;
 - ⑧ Results of monitoring and evaluation of the effect of project development on the resource;
- For subsequent meetings the TGs will:
 - Be responsible for overseeing the accomplishment of the following:
 - ① Implement monitoring plan as approved by BLM;
 - ② Review and evaluate monitoring data collected;
 - ③ Present and submit monitoring results annually to PAWG and BLM;
 - ④ Review and evaluate current monitoring plan;
 - ⑤ Modify monitoring plan and implement as approved by BLM;
 - ⑥ Recommend modifications to the development and monitoring plan to the PAWG and BLM;
 - ⑦ Recommend modification to mitigation as needed.

AEM Planning Process Leadership and Meeting Agenda

The BLM will implement and coordinate the AEM Planning Process. The leadership for the coordination of the AEM Process will be located in the BLM Pinedale Field Office. Meetings of the PAWG and TGs will be held at least annually and will be open to the public. The PAWG meetings will be facilitated by a qualified facilitator. PAWG meetings will be held in the evening to allow maximum public involvement. The meeting agenda will include the following:

Function of PAWG at First Meeting:

- Explain Purpose and Need for AEM Planning Process;
- Explain organizational structure and functional responsibilities of PAWG and TGs;
- Establish and select PAWG membership;

- Review draft Memorandum of Understanding;
- Establish and select *TG* memberships;
- Set date, time, and place for next *PAWG* meeting.

Function of *PAWG* at Subsequent Meetings:

- Review minutes from previous meeting;
- Reports presented from the *TGs* on monitoring results;
- Review recommendations from *TGs*;
- Review Operator Plans;
- Receive public input;
- Develop adaptive environmental management recommendations if necessary;
- Submit recommendations and monitoring results to BLM;
- BLM specify any new directives;
- Set date, time, and place for next *PAWG* meeting.

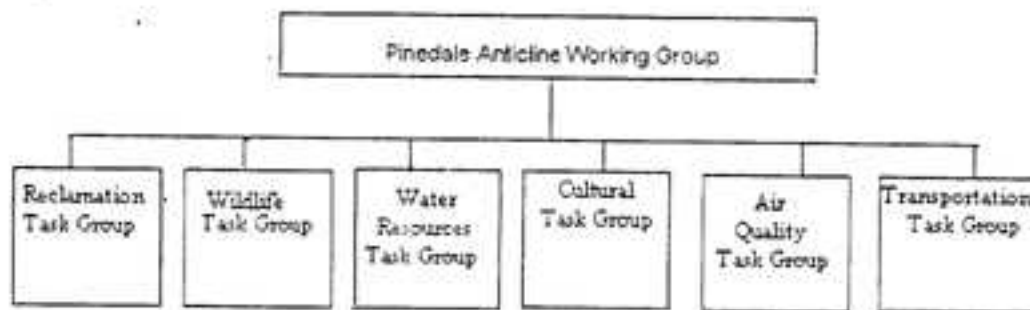
TG Leadership and Meeting Agenda

The individual *TG* leadership for the coordination among the membership and for the development, implementation, and reporting results of the monitoring plans will be as determined by the membership. Meetings of the *TGs* will be held as often as deemed necessary by the membership but at least annually and will be open to the public. The *TG* meetings will be facilitated by the membership-selected leader. *TG* meetings will be held during work-day hours. The agenda will be developed by the *TG* leader to address the necessary items as defined under the *TG Functions* above.

AEM Planning Process Funding

The BLM and the cooperating agencies lack the resources to adequately fund the implementation of monitoring programs specified. While the BLM and cooperating agencies need to be thoroughly involved in all aspects of monitoring, the majority of costs to implement these monitoring programs will have to be borne by the operators. The agencies will cooperate in the funding of monitoring to the extent that budget allocations permit.

ATTACHMENT I TASK GROUP MEMBERSHIP



Suggested Membership - [Note: Members of the public will be added to all Task Groups]:

Reclamation Task Group

BLM, Operators, WGFD, County Weed/Pest, Livestock Operators, State of Wyoming, Sublette County

Wildlife Task Group

BLM, Operators, WGFD, U.S. Fish and Wildlife Service, Sublette County, Environmental Groups

Water Resources Task Group

BLM, Operators, State Engineer, Wyoming DEQ-Water Quality Division, U.S. Army Corps of Engineers, Livestock Operators, Sublette County

Cultural Task Group

BLM, Operators, State Historic Preservation Office

Air Quality Task Group

BLM, Operators, Wyoming DEQ-Air Quality Division, USDA Forest Service

Transportation Task Group

Already established

ATTACHMENT 1

MAP



TRAILS

U.S. Department of the Interior
Bureau of Land Management

[illegible]